

O/0704/26

TRADE MARKS ACT 1994

CONSOLIDATED PROCEEDINGS

IN THE MATTER OF APPLICATION NO. UK00004163233

IN THE NAME OF EASYGROUP LIMITED

TO REGISTER THE TRADE MARK:



IN CLASS 9

AND IN THE MATTER OF OPPOSITION NO. OP000454597

BY STEINLING HOLDING B.V.

AND

IN THE MATTER OF UK REGISTRATION NO. UK00912163408

FOR THE FOLLOWING TRADE MARK:

EEZEETAGS

AND REGISTRATION NUMBER UK00912163242

FOR THE FOLLOWING TRADE MARK:



BOTH IN THE NAME OF STEINLING HOLDING B.V.

IN CLASSES 7, 9, 16, 35, 39, 40 AND 42

AND APPLICATIONS FOR REVOCATION THEREOF UNDER NOS. CA000508881

AND CA000508883 BY EASYGROUP LTD

BACKGROUND AND PLEADINGS

1. Trade mark number UK00912163408 (“**the ‘408 mark’**”) and number UK00912163242 (“**the ‘242 mark’**”) stand registered in the UK for the marks shown on the front page of this decision in the name of Steinling Holding B.V. (“**Steinling**”). Steinling’s registrations are comparable marks (EU).¹ Both marks were filed on 23 September 2013 and completed their registration process on 19 February 2014. At this date, the marks were registered for goods and services in classes 7, 9, 16, 35, 39, 40 and 42. A full list of the registered goods and services is reproduced at Annex A to this decision.
2. On 20 February 2025, easyGroup Limited (“**EasyGroup**”) applied to register in the UK the trade mark shown on the cover page of this decision, under number UK00004163233 (“**the ‘233 mark’**”). On 7 March 2025, the ‘233 mark was accepted and published in the Trade Marks Journal in respect of the following goods:

Class 9 Wireless communication devices for the transmission of data and audio; downloadable computer software for locating, monitoring, and tracking the position of objects and other electronic devices; electronic tags used for locating and tracking lost property; electronic tracking apparatus and instruments; electronic tags for goods; peripheral devices for computers, mobile telephones, and mobile electronic devices, namely, electronic tags used for locating, monitoring, and tracking the position of objects and other electronic devices; wearable computer peripherals used for locating, monitoring, and tracking the position of objects and other electronic devices; lanyards for mobile digital electronic devices and wearable electronic devices; carrying cases for wearable computer peripherals used for locating, monitoring, and tracking the position of objects and other electronic devices; carrying cases for electronic tags for goods.

¹ Following the end of the transition period of the UK’s withdrawal from the EU, all EU trade marks (“EUTM”) registered before 1 January 2021 were recorded as comparable trade marks in the UK trade mark register (and as a consequence, have the same legal status as if they had been applied for and registered under UK law). A ‘comparable trade mark (EU)’ retains the same filing date, priority date (if applicable) and registration date of the EUTM from which it derives.

3. On 9 June 2025, Steinling opposed the trade mark application in its totality under section 5(2)(b) of the Trade Marks Act 1994 ("**the Act**").² Steinling relies upon the '408 mark in relation to the goods in classes 9 and 16 underlined in Annex A to this decision.³
4. By virtue of its earlier filing date, the '408 mark qualifies as an earlier mark under section 6(1) of the Act. As the earlier mark completed its registration procedure more than five years before the filing date of the opposed '233 mark, it is subject to the use provisions set out in section 6A of the Act.
5. Under section 5(2)(b), Steinling contends that the respective marks are highly similar in their respective dominant and distinctive elements (i.e., EEZEETAGS and EASYTAG) and that there is identity or similarity between the respective goods, leading to a likelihood of confusion including a likelihood of association. Therefore, Steinling requests that the application be refused.
6. With regard to the opposition, EasyGroup denies all the allegations made by Steinling and puts Steinling to proof of use.
7. On 15 May 2025, EasyGroup sought revocation of the '408 mark and the '242 mark in their entirety, for non-use under sections 46(1)(a) and 46(1)(b) of the Act. EasyGroup alleges that Steinling has not used the marks within the five-year periods set out below:

Section 46(1)(a): following the date of completion of the registration process, i.e. 20 February 2014 – 19 February 2019 ("**the first relevant period**"). The earliest possible revocation date is 20 February 2019.

Section 46(1)(b):

Start dates	End dates	The earliest possible revocation dates	

² With the official letter of 30 September 2025, the Office informed the parties that opposition 454597 and revocations 508881 and 508883 were being consolidated.

³ In Steinling's submissions in lieu (paragraph [42]), it is stated that the opposition is based on the registrations number UK009121634408 and UK00912163242. Whilst this is noted, the Form TM7 indicates that the opposition is exclusively based upon the earlier trade mark number UK00912163408.

20 February 2019	19 February 2024	20 February 2024	<i>“the second relevant period”</i>
15 May 2020	14 May 2025	15 May 2025	<i>“the third relevant period”</i>

8. With regard to the revocations, Steinling denies that there has been no use of the ‘408 mark and the ‘242 mark.
9. Steinling is represented by Wilson Gunn. EasyGroup is represented by Kilburn & Strode LLP.

RELEVANCE OF EU LAW

10. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK’s withdrawal from the EU.

EVIDENCE AND SUBMISSIONS

11. During the evidence rounds neither party filed written submissions and only Steinling filed evidence. That evidence is dated 30 October 2025 and is given in the form of a witness statement from Borry Vrieling, a Director of Steinling since 2022. It is accompanied by Exhibits EXH1 – EXH11. Mr Vrieling is authorised to file evidence on behalf of Steinling.
12. Neither party requested a hearing but they both filed written submissions in lieu of a hearing.
13. I will not summarise here the parties’ evidence or submissions, but I will refer to them to the extent that I deem necessary throughout my decision. This decision is taken following careful consideration of all the papers.

DECISION

MY APPROACH

14. The relevant date for assessing the opposition is the filing date for the ‘233 mark, i.e. 20 February 2025. That date falls after two of the claimed effective dates of revocation. Consequently, if the mark relied upon by Steinling (being the ‘408 mark) is not found to have been put to genuine use in either the first or the second relevant periods, and it is revoked from either of the earlier two claimed effective dates of revocation, there will be no earlier right upon which Steinling can rely in the opposition. I will, therefore, begin by considering the revocation actions brought by EasyGroup.

THE REVOCATIONS

Statutory provisions

15. The relevant provisions of section 46 of the Act are as follows:

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

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

(b) that such use has been suspended for an uninterrupted period of five years, and there are no proper reasons for non-use;

[...]

(2) For the purpose of subsection (1) use of a trade mark includes use in a form (the “variant form”) differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name

of the proprietor), and use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

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

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

(4) [...]

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

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

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

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

16. Section 100 of the Act is also relevant, which reads:

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

17. Given that Steinling’s mark is a comparable mark, paragraph 8 of part 1, schedule 2A of the Act is also relevant, which states:

“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”.

Relevant case law

18. 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 Marken BV v Hagelkruis Beheer BV* [EU:C:2012:816], Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], Case C-141/13 *P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089], Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434] and Joined Cases C-720/18 and C-721/18 *Ferrari SpA v DU* [EU:C:2020:854].

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

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

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

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

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14]. Nor does the distribution of promotional

items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71].

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

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

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

19. The General Court of the European Union has repeatedly held that genuine use of a trade mark cannot be proved by means of probabilities or suppositions, but must be demonstrated by solid and objective evidence of effective and sufficient use of the trade mark on the market concerned: see e.g. Case T-78/19 *Lidl Stiftung & Co KG v European Union Intellectual Property Office* [EU:C:2020:166] at [25]. It has also repeatedly held that the smaller the commercial volume of the exploitation of the mark, the more necessary it is for the proprietor to produce additional evidence to dispel any doubts as to the genuineness of its use: see e.g. *Lidl* at [33].
20. What I take from the relevant case law is that there is no requirement to produce any specific form of evidence, but that I must consider what the evidence as a whole shows me and whether, on this basis, I can reasonably be satisfied on the balance of probabilities that there has been genuine use of the mark.⁴
21. Proven use of a mark which fails to establish that “the commercial exploitation of the mark is real” because the use would not be “viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods or services protected by the mark” is not, therefore, genuine use.

Assessment of the evidence

22. As a preliminary point, I appreciate that Mr Vrieling states that the evidence is to show use of the ‘408 mark⁵ and that EasyGroup contends that I should assess the evidence exclusively in relation to this mark.⁶ However, I find that the evidence also contains instances of use of the ‘242 mark. Therefore, I will take into account such uses to determine whether the evidence shows use also in relation to the ‘242 mark.
23. Mr Vrieling also states that the evidence is intended to show use in relation to the goods in classes 9 and 16.⁷ Therefore, I will proceed on the basis that the registrations are no longer defended for the goods and/or services in the other classes. I will focus my assessment of the evidence initially on the period between **19 February 2019 and 15 May 2025**. If there is use in the third relevant period,

⁴ *Awareness Limited v Plymouth City Council*, Case BL O/236/13; *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd*, Case BL O/404/13.

⁵ Mr Vrieling’s witness statement at [3].

⁶ EasyGroup’s written submissions at [16] and [17].

⁷ Mr Vrieling’s witness statement at [3].

then this will automatically save the registration for the first and second relevant periods due to the application of section 46(3) of the Act. I will consider the earlier relevant periods if necessary.

24. Mr Vrieling clarifies that the goods in question are self-adhesive baggage labels used at airports including standard baggage tags and tags containing RFID chips.⁸ The evidence indicates that the proprietor's bag tags have a "linerless" technology integrating RFID technology that allows tags to be read by machines without the need for a barcode.⁹

25. Mr Vrieling provides extracts from the Wayback Machine database featuring the same page from Steinling's website ('www.eezeetags.com'), available between 16 February 2019 and 20 February 2025, illustrating "eezeetags" products as being self-adhesive linerless bag tags for use in airports. In the evidence, the '408 mark is used to refer to the proprietor.¹⁰

26. The evidence also features two tables indicating the sales records for "eezeetags" tags/labels in the UK.¹¹ Mr Vrieling reports that this part of the evidence relates to the tags/labels in class 16.¹² Mr Vrieling also indicates that the product descriptions in one of the tables contain the reference "ARINC" to indicate goods sold to a supplier of self-service bag drop installations.¹³ Looking at the table, references to ARINC do not feature "eezeetags" in their description. I will focus my assessment of this part of the evidence exclusively where the '408 mark is featured.

27. The two tables, respectively dated March 2019 - January 2023 and August 2021 - May 2025, show that the '408 mark was used for the distribution of a total of over 104 million products to various customers (e.g., EASYJET, Xerox UK P, Tui UK, ICM-UK, Ink Aviatt, Seko, Biggin Hill Airport, Paragon ID, Security Airware, Birmingham Airport, ESP Global Services Ltd., Universal / The Brewhouse, Circle Express, Perfect Finishing, EDINBURGH AIRPORT Ltd., STACI (MDA) LEICESTER, SITA Manchester Airport) located in various parts of the UK (e.g., Cramlington, Leeds, Biggin Hill, Hounslow, Uxbridge, Milton Keynes, Nostell,

⁸ Mr Vrieling's witness statement at [9].

⁹ Exhibit EXH6, page 17.

¹⁰ Exhibit EXH3.

¹¹ Exhibits EXH10 and EXH11.

¹² Mr Vrieling's witness statement at [19] and [20].

¹³ Mr Vrieling's witness statement at [19].

Wakefield, Gatwick/Gatwick Airport, Horley, Nottingham, Wolverhampton, Birmingham Airport, Berkshire, Dewsbury, Edinburgh, Leicester, Bath and Manchester).

28. With regard to the marketing of the goods at hand, the evidence shows that the '408 mark is displayed on the tags (both class 9 and class 16) themselves as shown in the images below:¹⁴

RFID eezeetags baggage labels (Class 9)



¹⁴ Exhibit EXH4.

eezeetags baggage labels (Class 16)



29. Therefore, the consumers will be confronted with the '408 mark in relation to all the labels being distributed.

30. The evidence also contains third-party magazines extracts. The use of the marks made on Future Airport, Airport Business and Future Travel Experience Global are not use by the proprietor. With regard to the extracts from the International Airport Review (dated between October 2019 and April 2025),¹⁵ Mr Vrieling clarifies that this evidence features "eezeetags" advertising for the proprietor's tags and labels.¹⁶ Thus, this amounts to relevant use made by the proprietor. The magazine extracts exclusively refer to the word-only "eezeetags" in relation to luggage tags (i.e., the '408 mark). This part of the evidence, however, also features some screenshots from the proprietor's website 'www.eezeetags.com', dated between October 2019 and November 2023, featuring both the '408 mark and the '242 mark for advertising purposes.¹⁷

31. EasyGroup submitted a detailed criticism of each exhibit submitted by Mr Vrieling. Whilst I appreciate that the comments made by EasyGroup on the evidence are relevant and I have taken them into consideration in my assessment, I bear in mind

¹⁵ Exhibits EXH5 and Exhibit EXH8.

¹⁶ Mr Vrieling's witness statement at [13].

¹⁷ Exhibit EXH5, pages 13, 14 and 15.

the case law cited above and that the evidence as a whole must be taken into account rather than focusing on each individual piece of evidence.

32. I find the evidence presents a few gaps in that part of it is dated outside the relevant periods, Mr Vrieling did not provide revenue figures, advertising spend, or marketing initiatives relating to the UK (or in the EU for the relevant period prior to IP Completion Day). Nonetheless, with regard to the ‘408 mark, the evidence shows that the proprietor has distributed, within the relevant period, hundreds of millions of units to various clients in different parts of the UK and Mr Vrieling reports that Steinling holds approximately 15-20% of the market share for self-adhesive baggage labels used at airports.¹⁸ Furthermore, the evidence shows that the ‘408 mark is applied to all the labels being marketed and the mark has been advertised in one third-party magazine for the relevant market sector. All the uses in the evidence are of the mark as registered.
33. Therefore, especially taking into account the high number of units sold to different clients in various parts of the UK during the third relevant period as well as some brand exposure that the ‘408 mark has received on a third-party magazine, I find that Steinling has shown genuine use of the ‘408 mark for self-adhesive luggage tags/labels.
34. For the sake of completeness, Steinling did not provide any evidence in relation to the remaining registered goods and services in classes 7, 35, 39, 40 and 42. I note that the registered class 35 for the ‘408 mark features services relating to the retail and distribution of labels. However, whilst the evidence shows that Steinling used the ‘408 mark to sell its own labels, I must bear in mind that the sale of goods is not considered to be a service.¹⁹ There is nothing before me which suggests that Steinling has offered a retail service. Therefore, the ‘408 mark is revoked for classes 7, 35, 39, 40 and 42 as further clarified below in this decision.
35. Turning to the ‘242 mark, although the evidence shows a few instances where this mark is reproduced as registered, I must assess if the use of the ‘408 mark (i.e., the word-only “ezeetags”) is an acceptable variant use of the ‘242 mark to

¹⁸ Mr Vrieling's witness statement at [4] and [5].

¹⁹ See the WIPO Explanatory Note for the class 35 heading available at https://nclpub.wipo.int/enfr/?explanatory_notes=show&lang=en&menulang=en¬ion=class_heading_s&version=20260101.

determine if the evidence sufficiently shows genuine use also in relation to the ‘242 mark. Use of the ‘242 mark as registered is clearly acceptable use.

36. For convenience, I reproduce the ‘242 mark below:



37. EasyGroup contends that *“the degree of stylisation of the figurative mark [the ‘242 mark] is such that the use of the word mark [the ‘408 mark] cannot support the use of the former”*.²⁰

38. Whilst EasyGroup’s submission is noted, I find the word “eezeetags” to be the main distinctive element in the mark with the colourful stylisation having a minimal impact on its distinctiveness. I note the mark also contains some sort of symbol on its top right-hand side, perhaps either the ® or the © symbol. The symbol is too small in the image for me to clearly determine what it represents. In any case, this element, given its size and position, does not affect the mark’s distinctiveness.

39. With regard to the mark’s colourful representation, I remind myself that the use of colour does not alter the mark’s distinctive character, which lies in the word itself.²¹ Therefore, uses of the word-only “eezeetags” amount to genuine use also of the ‘242 mark. The same reasoning applies to the symbol in the ‘242 mark. Given that the letter combination/word “eezeetags” is the mark’s main distinctive element, uses of the word-only mark without the symbol also consist of acceptable variant use of the ‘242 mark.

40. As I found genuine use for the word-only mark, the same outcome applies to the ‘242 mark for which I find that the evidence shows sufficient genuine use in relation to self-adhesive luggage tags/labels. Regarding the remaining goods and services contained in the registered classes 7, 35, 39, 40 and 42, the same reasoning outlined at paragraph [34] applies. As Steinling did not provide any evidence in this

²⁰ EasyGroup’s submissions in lieu at [18].

²¹ *Lactalis McLelland Limited v Arla Foods AMBA*.

regard, the ‘242 mark is revoked for these goods and services as further clarified below in this decision.

41. For the sake of completeness, I noted at paragraph [23] that I would focus my assessment of the evidence exclusively on classes 9 and 16 as indicated by Mr Vrieling in his witness statement. Even in the absence of that admission, there is plainly no use of the ‘408 mark and of the ‘242 mark in the other classes and so I would have arrived at the same result in any case.

Fair specification

42. Having found use of both registrations, I must determine a fair specification upon which Steinling is entitled to rely, bearing in mind the use that has been demonstrated. The ‘408 mark and the ‘242 mark feature the same specification in classes 9 and 16. I will carry out the same assessment in relation to both marks’ specifications.

43. In *Merck KGaA v Merck Sharp & Dohme Corp & Ors*, [2017] EWCA Civ 1834, Kitchen LJ (as he then was) set out the approach to be followed when considering partial revocation of a trade mark. The same approach is relevant when framing a fair specification. He said:

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

245. First, it is necessary to identify the goods or services in relation to which the mark has been used during the relevant period.

246. Secondly, the goods or services for which the mark is registered must be considered. If the mark is registered for a category of goods or services which is sufficiently broad that it is possible to identify within it a number of subcategories capable of being viewed independently, use of the mark in relation to one or more of the subcategories will not constitute use of the mark in relation to all of the other categories.

247. Thirdly, it is not possible for a proprietor to use the mark in relation to all possible variations of a product or service. So care must be taken to ensure this exercise does not result in the proprietor being stripped of protection for goods or services which, though not the same as those for which use has been proved, are not in essence different from them and cannot be distinguished from them other than in an arbitrary way.

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

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

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

“261. [...] First, there can be no doubt that an application to register a mark in respect of a broad category of goods or services may be made partly in bad faith in so far as the broad description includes distinct sub-categories of goods or services in relation to which the applicant never had any intention to use the mark, whether conditionally or otherwise. In my view, that emerges clearly from the decision of the CJEU in this case. The approach to be adopted in such a case was explored and explained by the Court of Appeal in *Merck KGaA v Merck Sharp & Dohme Corp* [2017] EWCA Civ 1834; [2018] ETMR 10, at paras

241-2491 and, so far as I am aware, that approach has proved workable and appropriate and has stood the test of time, save that it must now be seen in light of the more recent guidance given by the CJEU in, for example: *Ferrari SpA v DU* (Joined Cases C-720/18 and C-721/18) EU:C:2020:854; [2021] Bus LR 106, at paras 36-53. There the CJEU explained, at para 40, that the essential criterion to apply for the purposes of identifying a coherent subcategory of goods or services capable of being viewed independently is their purpose and intended use.”

45. In *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited*, BL O/345/10, Mr Geoffrey Hobbs Q.C. (as he then was) as the Appointed Person summed up the law as being:

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

46. The extracts from the proprietor’s website refer to baggage tags that are self-adhesive and linerless (i.e., without the need for a barcode to be read by the airport check-in machines) for use in airports. The evidence also shows one picture of a label with RFID technology. These are the only instances in the evidence that refer to or show use of the marks in relation to electronic labels/tags in class 9. As reported at paragraph [26], the sales records in the UK exclusively refer to class 16 labels/tags. The extracts from the International Airport Review refer to luggage labels for use in airports, but they do not clarify whether these are electronic or not. The only extract in the magazine reproducing the goods show labels with barcodes (i.e. class 16 standard luggage labels for airport use).

47. In view of these considerations, I believe that the evidence only enables me to assess the scale of the use of the marks in relation to a specific type of labels carrying a barcode for use at the bag-drop terminals in airports. Whilst there may have been use in relation to electronic labels, without any further detail to enable

me to assess the scale of that use, I am not able to conclude that there has been genuine use in relation to those goods. In my view, the specification should be limited to reflect that the only use that has been shown relates specifically to baggage labels, which I consider to be a sub-category of the goods listed. Whilst I bear in mind that there is only evidence of use in an airport setting, to my mind, narrowing the specification in that way would be overly restrictive, as the goods will be fundamentally the same whether they are used on baggage in an airport, or any other setting (such as a cruise port or train terminal). Accordingly, I find the following to be a fair specification for the use shown of the '408 mark and the '242 mark by Steinling:

Class 16 Labels of plastics; Labels, not of textile; Self-adhesive labels not of textile; all of the aforesaid being baggage labels.

Final Remarks

48. For the avoidance of doubt, my findings in the revocations would not have been any broader in respect of either of the earlier relevant periods. Consequently, as explained above, I do not need to consider those relevant periods any further in respect of those goods that have survived the revocations because the use shown in the third relevant period prevents their revocation in either of the earlier two periods due to the application of section 46(3). With regard to the goods and services for which there has been no genuine use found, there is nothing which puts Steinling in a stronger position for either of the earlier relevant periods and, as such, the same findings apply.

THE OPPOSITION

Proof of use

49. As the '408 mark had been registered for more than 5 years at the filing date for the '233 mark, it is subject to the use provisions of section 6A of the Act. The relevant period for assessing proof of use in the opposition (i.e., 21 February 2020 – 20 February 2025) overlaps with the period I discussed above in the revocation, in which I have found genuine use (being 15 May 2020 - 14 May 2025).

Consequently, I consider that the same finding applies here and Steinling can rely upon the '408 mark for the same specification set out above.

Section 5(2)(b)

50. Sections 5(2)(b) and 5A of the Act state:

“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.

5A Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only.”

The principles

51. The following standard summary of the principles applicable to the assessment of the likelihood of confusion was approved by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc & Anor*, [2025] UKSC 25:

(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, in certain circumstances, be dominated by one or more of its components;

(f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite 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 greater 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; and

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

Comparison of goods

52. Section 60A of the Act provides:

“(1) For the purpose of this Act goods and services-

(a) are not to be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification.

(b) are not to be regarded as being dissimilar from each other on the ground that they appear in different classes under the Nice Classification.

(2) In subsection (1), the “Nice Classification” means the system of classification under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, which was last amended on 28 September 1975.”

53. In comparing the respective specifications, all relevant factors should be considered, as per *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, where the CJEU stated at paragraph 23 of its judgment:

“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.”

54. The relevant factors identified by Jacob J. (as he then was) in *British Sugar Plc v James Robertson & Sons Limited* (“*Treat*”) [1996] R.P.C. 281, for assessing similarity were:

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;
- (d) The respective trade channels through which the goods or services reach the market;
- (e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
- (f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

55. Trade mark registrations should be interpreted according to their ordinary and natural meaning.²²

56. For the purposes of considering the issue of similarity of the goods, it is permissible to consider groups of terms collectively where appropriate: *Separode Trade Mark*, BL O-399-10.

²² *YouView Ltd v Total Ltd* [2012] EWHC 3158 (Ch) at [12].

57. The goods for comparison are as follows:

EasyGroup's goods	Steinling's goods
<u>Class 9</u>	<u>Class 16</u>
Wireless communication devices for the transmission of data and audio; downloadable computer software for locating, monitoring, and tracking the position of objects and other electronic devices; electronic tags used for locating and tracking lost property; electronic tracking apparatus and instruments; electronic tags for goods; peripheral devices for computers, mobile telephones, and mobile electronic devices, namely, electronic tags used for locating, monitoring, and tracking the position of objects and other electronic devices; wearable computer peripherals used for locating, monitoring, and tracking the position of objects and other electronic devices; lanyards for mobile digital electronic devices and wearable electronic devices; carrying cases for wearable computer peripherals used for locating, monitoring, and tracking the position of objects and other electronic devices; carrying cases for electronic tags for goods.	Labels of plastics; Labels, not of textile; Self-adhesive labels not of textile; all of the aforesaid being baggage labels.

58. With regard to the respective goods, EasyGroup contends that they are dissimilar stating that EasyGroup's goods are wireless and electronic tracking devices that differ from Steinling's self-adhesive labels in nature, purpose, trade channels,

users and that these goods are neither complementary nor in competition with each other.²³

59. Steinling argues that EasyGroup's goods in class 9 are similar to its label goods in class 16 in that the respective goods share the same nature (both labels), intended purpose (tracking of physical property), they are in competition, share the same users, the same trade channels and they are complementary.²⁴

60. I have carefully considered the parties' submissions, and I have borne them in mind in conducting my assessment of the degree of similarity (or lack thereof) between the respective goods as outlined below.

61. I note that Steinling's goods are baggage labels that provide information on the luggage's owner (e.g., the owner's personal information or the journey details). The labels can carry written information or a barcode for scanning.

Class 9

- *Wireless communication devices for the transmission of data and audio*

62. The contested goods are essentially hardware used to wirelessly transmit or receive audio content and digital information (e.g., mobile phones, radios or wireless headsets). The respective goods do not have the same nature in that baggage labels cannot be defined as wireless devices; they have different methods of use and different intended purposes (transmit data and audio for various uses versus provide information on the traveller/luggage for tracking of the baggage). The respective goods could overlap in users in that businesses as well as the general public may use wireless communication devices, however, the goods do not overlap in trade channels, and they are neither in competition with, nor complementary, to each other. I find these goods to be dissimilar.

- *Downloadable computer software for locating, monitoring, and tracking the position of objects and other electronic devices*

²³ EasyGroup's submissions in lieu at [129] – [136].

²⁴ Steinling's submissions in lieu at [51] – [58].

63. The respective goods differ in their nature (software versus physical labels) and have different methods of use, but they can overlap in their intended purpose (e.g., tracking the position of objects including luggage). Although labels that have a barcode may require a scanning machine to read them, it is unlikely that the labels would require a particular software to be read to the point that the same business providing tracking software would also manufacture the labels and vice versa. Therefore, I find the goods to do not share the same trade channels, are neither in competition nor complementary to each other. However, the goods may overlap in end users in that both businesses and the general public could use the respective goods. Overall, I find that the goods are dissimilar.

- *Electronic tags used for locating and tracking lost property; electronic tracking apparatus and instruments; electronic tags for goods*

64. Both electronic tags and Steinling's traditional baggage labels can be applied to luggage to track it. Therefore, although the goods have different nature (electronic apparatus versus traditional labels), they share the same intended purpose (tracking objects) and method of use (attach the tag or label to the luggage). Since electronic tags are more technically advanced goods, the same undertaking is unlikely to manufacture both electronic tags and standard labels. Thus, the goods do not share the same providers and trade channels. However, the goods can target the same consumer and be in competition with each other in that, for example, airports could decide between purchasing electronic tags or standard labels to use on their passengers' baggage. Overall, the goods have a between low and medium degree of similarity.

- *Peripheral devices for computers, mobile telephones, and mobile electronic devices, namely, electronic tags used for locating, monitoring, and tracking the position of objects and other electronic devices*

65. I remind myself that specifications including "namely" should be interpreted as only covering the named goods, that is, the specification is limited to those goods.²⁵

²⁵ Manual of Trade Marks practice, The Classification addendum (under letter "I"): <https://www.gov.uk/guidance/trade-marks-manual/the-classification-addendum#:~:text=Note%20that%20specifications%20including%20%E2%80%9Cnamely%E2%80%9C>

Accordingly, the contested goods are electronic tags that are specifically used as peripheral devices: electronic tags connected with an electronic device (i.e., a computer, phone or other devices) to enable the user to track them. In relation to Steinling's traditional baggage labels, the respective goods have different natures (peripheral electronic tags for electronic devices versus standard luggage labels) and methods of use. These goods overlap in their intended purpose (tracking an object), but they do not share the same providers, channels of trade or users. They are neither complementary nor in competition with each other. Given their shared intended purpose, I find the goods have a low degree of similarity.

- *Wearable computer peripherals used for locating, monitoring, and tracking the position of objects and other electronic devices*

66. With regard to Steinling's standard baggage labels the respective goods overlap in their intended purpose (locating or tracking objects including baggage), but they have a different nature (wearable devices connected to a computer versus standard labels including labels with barcodes) and method of use. These goods are not complementary, do not share the same trade channels and they are not in competition with each other. The respective goods may share the same users (the general public) purchasing wearable computer peripherals as well as luggage labels. I find the goods to have a low degree of similarity, especially given their shared intended purpose.

- *Lanyards for mobile digital electronic devices and wearable electronic devices*

67. The contested goods consist of straps, cords or tethers specially adapted for attachment to electronic devices, enabling the devices to be carried, secured, retained or protected against accidental dropping or loss. With regard to Steinling's baggage labels (including self-adhesive labels) in class 16, I find the goods to have different nature, method of use and intended purpose. The goods do not share the same trade channels although they may share the same users (the general public). The goods are neither complementary nor in competition with each other. I find the respective goods to be dissimilar.

9D%20should%20be%20interpreted%20as%20only%20covering%20the%20named%20Goods%2C%20that%20is%2C%20the%20specification%20is%20limited%20to%20those%20goods.

- *Carrying cases for wearable computer peripherals used for locating, monitoring, and tracking the position of objects and other electronic devices; carrying cases for electronic tags for goods*

68. With regard to Steinling's baggage labels (including self-adhesive labels), I find the goods to have different nature, method of use and intended purpose. The goods do not share the same trade channels, although they may share the same users (the general public). The respective goods are neither complementary nor in competition with each other. I therefore find these goods to be dissimilar.

The average consumer and the purchasing act

69. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect.

70. In *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc & Anor*, [2025] UKSC 25, the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)* [2024] EWCA Civ 262, where he pointed out that:

(a) Consumers who are ill-informed or careless, or consumers with specialised knowledge or who are excessively careful are excluded from consideration;

(b) The average consumer provides a standard which enables the courts to strike a balance between the competing interests involved, such as trade mark owners, their competitors and consumers;

(c) The average consumer is neither a single hypothetical person nor a mathematical average; assessment from the perspective of the average consumer does not involve a statistical test. There is no single meaning rule and if, having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, a finding of infringement may properly be made;

(d) Assessment from the perspective of the average consumer is intended to facilitate adjudication of trade mark disputes by providing an objective criterion,

by promoting consistency of assessment and by enabling courts and tribunals to determine such issues so far as possible without the need for evidence;

(e) The average consumer's level of attention varies according to the category of goods or services in question;²⁶ and

(f) the average consumer rarely has the opportunity to make direct comparisons between trade marks (or between trade marks and signs) and must instead rely upon the imperfect picture of the trade mark they have kept in their mind.

71. Steinling contends that the relevant consumers are airports and airlines and that they will pay at least an average degree of attention when purchasing the goods at hand.²⁷ EasyGroup argues that the goods are not sold to the general public, but instead they are supplied to airports, airlines and suppliers of self-service bag-drop installations and that these professional consumers will pay a high degree of attention when purchasing the goods.

72. I agree with the parties that the relevant consumers for luggage labels can be professionals (e.g., hotels, railways, cruise lines, or airlines). These professionals can also be the relevant public for electronic tags for tracking property. However, I find that also the general public can purchase both luggage labels as well as electronic tags.

73. The goods are likely to be fairly inexpensive, and I agree with EasyGroup that the goods are not particularly specialised.²⁸ When purchasing the goods, the professionals will take into account the impact that an error in the purchase of the goods may have on the business operations (e.g., effects on luggage tracking and the passengers' travel experience). The general public is going to choose the goods to use on valuable items that they want to keep hold of, so they are going to want to make sure they choose something suitable for their needs and that works properly. Therefore, I find that both the professionals and the general public will pay a higher than medium degree of attention will be paid during the purchasing process.

²⁶ *Lloyd Schuhfabrik Meyer*, Case C-342/97.

²⁷ Steinling's submissions in lieu at [52] and [73].

²⁸ EasyGroup's submissions in lieu at [114].

74. The goods may be purchased following perusal of advertisements (whether physical such as leaflets or online) and selection from specialised platforms or shops (either online or physical). This means that the mark will be seen and so the visual element of the mark will be the most significant (see *New Look Limited v OHIM*, Joined cases T-117/03 to T-119/03 and T-171/03, paragraph 50). Visual considerations are, therefore, likely to dominate the selection process. However, I do not discount that there will also be an aural component to the purchase, as word-of-mouth recommendations may be made.

Comparison of trade marks

75. It is clear from *Sabel BV v Puma AG, Case C-251/95* that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components. The CJEU states at paragraph [34] of its judgment in *Bimbo SA v OHIM*, Case C-591/12P, 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 relevant weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

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

77. The marks to be compared are as follows:

Steinling's mark	EasyGroup's mark
<i>(the '408 mark)</i> EEZEETAGS	<i>(the '233 mark)</i> 

Overall impression

78. The '408 mark consists of the all-capitalised word (or letter combination) "EEZEETAGS" in standard font. I bear in mind that when perceiving a verbal sign, they break it down into elements that suggest a concrete meaning, or that resemble words that they already know.²⁹ It is possible for the consumer to break down a word mark even if only one of the elements making up that mark is familiar to the consumer.³⁰ It is my view that the consumers are likely to extract "TAGS" from the mark and read it as the combination of "EEZEE-" (i.e., unusual misspelling of "easy") and "TAGS". Since "EEZEE-" is an unusual misspelling of "easy", the consumers will likely perceive it as the most distinctive element of the mark with "TAGS" being descriptive of the goods at hand. Hence, "EEZEE-" contributes the most to the mark's overall impression with "TAGS" playing a lesser role.

²⁹ Case T-256/04, *Respicur*, at [57]; Case T-146/06, *Aturion*, at [58].

³⁰ Case T-585/10, *Penteco*, at [72]; Case T-356/02, *Vitakraft / krafft (fig.)*, at [51].

79. The '233 mark features the lower-case word "easy" conjoined to "Tag" followed by ".app". "easyTag" and the full stop are emboldened whereas "app" is not. Underneath, in smaller size, the mark features the string of words "Part of the easy® family of brands". The word "easy®" in the strapline is in bold and features the same font as the word "easy" in the line above. The rest of the words in the string are in standard font. All the words in the mark are white against an orange background. I agree with Steinling that "easyTag" is the main distinctive element in the mark with ".app" contributing less to the mark's overall impression.³¹ I find this especially given the size and position of "easyTag" in the mark and that ".app" could be perceived as a Top Level Domain (TLD). I also agree with Steinling that the sentence "Part of the easy® family of brands" is low in distinctiveness,³² not only because it consists of a promotional phrase aimed at informing the consumers but also given its size and position in the mark. I find that it makes only a low contribution to the mark's overall impression. The mark's colours also have little impact on the mark's overall impression.

Visual similarity

80. Steinling contends that the marks are visually similar to a medium to high degree. It is argued that the marks share the same suffix "TAG / TAGS", the prefixes "EEZEE" and "easy" have the same length and structure and that the addition of ".app", as well as the phrase "Part of the easy® family of brands", although partially detract from the marks' visual similarity, do not affect the visual overlap between the dominant elements "EEZEETAGS" and "EASYTAG".³³ EasyGroup did not file specific submissions on this point.

81. The '408 mark consists of the three-syllable letter combination "EEZEETAGS" and it overlaps with the '233 mark exclusively in the first letter "E" and the three-letter word "tag". All the other elements in the respective marks differ. More specifically, the initial "EEZEE-", although it may be voiced "easy", consists of a misspelling featuring a letter combination that significantly departs from "easy" in the '233 mark. Furthermore, the '233 mark contains the additional ".app" and "Part of the easy®

³¹ Steinling's written submissions in lieu at [61] and [62].

³² Steinling's written submissions in lieu at [64].

³³ Steinling's written submissions in lieu at [66].

family of brands” that, although contribute less to the mark’s overall impression, substantially affect the marks’ visual dissimilarity. I also note that the ‘233 mark features a white/orange colour arrangement, but this is a neutral factor in the assessment. Overall, I find the marks have a very low degree of visual similarity.

Aural similarity

82. Steinling argues that “EZEETAGS” and “easyTag” are pronounced nearly identically in that they only differ in the plural of “tags” and because the consumers will simply ask for an “easytag” product without voicing all the remaining verbal elements in the ‘233 mark.³⁴ EasyGroup did not file submissions on this point.

83. I agree with Steinling that the consumers will pronounce “EEZEE-” as “easy” notwithstanding its unusual misspelling. I also agree that the marks coincide in their respective sounds “tags” and “tag” and that a significant proportion of average consumers will not articulate the “.app” and the informative tag line “Part of the easy® family of brands”. Overall, in view of the above considerations and considering that “EZEETAGS” features an additional “s” in respect of “easyTag”, I find that the marks have a high degree of aural similarity.

Conceptual similarity

84. Steinling submits that the marks are conceptually identical in that they both convey the same message that the goods are a tag that is easy to use.³⁵ EasyGroup did not file submissions on this point.

85. I agree with Steinling that the marks share the same meaning of a tag that is easy, including the meaning of an easy-to-use tag. The marks differ in their respective singular and plural form (tag/tags). I appreciate that the “.app” and the informative strapline in the ‘233 mark are points of conceptual difference, however, as these elements are less distinctive in the mark, I don’t find they particularly impact the marks’ conceptual similarity. Overall, the marks have a high degree of conceptual similarity.

³⁴ Steinling’s written submissions in lieu at [67].

³⁵ Steinling’s written submissions in lieu at [68].

Distinctive character of the earlier trade mark

86. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the 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).”

87. Registered trade marks possess varying degrees of inherent distinctive character.

These range from the very low, such as those which are suggestive or allusive of the goods or services, to those with high inherent distinctive character, such as invented words.

88. Dealing first with the inherent distinctiveness of the ‘408 mark, it consists of the conjoining of “EEZEE” (intended as the unusual misspelling of “easy”) and the dictionary word “TAGS”. Taking into account that the mark’s main distinctive element is “EEZEE-”, given its unusual misspelling, and that consumers will understand the mark as conveying the promotional (or positive) message that the

goods (tags) do not involve any complication, I find that the '408 mark has a between low and medium degree of inherent distinctiveness.

89. Turning to the question of whether the inherent distinctiveness of the '408 mark has been enhanced through use, Steinling has filed evidence of use. I already provided my account of Steinling's evidence at paragraphs [32] – [35]. Following from my assessment of the evidence, although I find that Steinling sufficiently proved genuine use of the '408 mark, given the evidence's shortcomings, I do not consider that it shows that the '408 mark has acquired enhanced distinctiveness through use.

Likelihood of confusion

90. There is no simple formula for determining whether there is a likelihood of confusion. The factors considered above have a degree of interdependency (*Canon* at [17]). I must make a global assessment of the competing factors (*Sabel* at [22]), considering the various factors from the perspective of the average consumer and deciding whether the average consumer is likely to be confused. In making my assessment, I must keep in mind that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them he has retained in his mind (*Lloyd Schuhfabrik* at [26]).

91. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other (*L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10).

92. I found the marks are aurally and conceptually similar to a high degree.

93. These findings seem to weigh in Steinling's favour. However, there is one factor, in particular, which weighs strongly against Steinling, namely, my finding that the marks are visually similar to a very low degree. This is of particular importance in the global assessment of the likelihood of confusion given that the purchasing act is likely to be primarily visual for all of the goods at issue.

94. Accordingly, in *New Look Ltd v OHIM* Joined cases T-117/03 to T-119/03 and T-171/03, the GC stated:

“49 However, it should be noted that in the global assessment of the likelihood of confusion, the visual, aural or conceptual aspects of the opposing signs do not always have the same weight. It is appropriate to examine the objective conditions under which the marks may be present on the market (BUDMEN, paragraph 57). The extent of the similarity or difference between the signs may depend, in particular, on the inherent qualities of the signs or the conditions under which the goods or services covered by the opposing signs are marketed. If the goods covered by the mark in question are usually sold in self-service stores where consumer choose the product themselves and must therefore rely primarily on the image of the trade mark applied to the product, the visual similarity between the signs will as a general rule be more important. If on the other hand the product covered is primarily sold orally, greater weight will usually be attributed to any aural similarity between the signs.”

95. Weighing all of these factors and bearing in mind that the respective goods’ degree of similarity ranges from low to between low and medium, the inherent distinctiveness of the ‘408 mark is between low and medium and that its distinctiveness has not been enhanced through use, along with the fact that the average consumer pays a higher than medium degree of attention, even taking into account the principle of imperfect recollection, I find that the relevant consumers are unlikely to look at “easyTag” in the ‘233 mark, misremember the unusual misspelling “EEZEE-” in the ‘408 mark, disregard all the additional visual elements in the ‘233 mark and mistake one mark for the other. Accordingly, I do not consider there to be a likelihood of direct confusion.

96. It now falls to me to consider the likelihood of indirect confusion. The concept of indirect confusion was described in the following terms by Iain Purvis Q.C. sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10:

“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).³⁶

97. These three categories are not exhaustive; rather, they were intended to be illustrative of the general approach, as has been confirmed by the Court of Appeal.³⁶ I recognise that a finding of indirect confusion should not be made merely because the competing marks share a common element. In this connection, it is not sufficient that a mark merely calls to mind another mark: this is mere association not indirect confusion.³⁷ The Court of Appeal has also emphasised

³⁶ *Liverpool Gin Distillery and others v Sazerac Brands, LLC and others* [2021] EWCA Civ 1207.

³⁷ *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17.

that, where there is no direct confusion, there must be a “proper basis” for finding indirect confusion.³⁸

98. Steinling contends that looking at the conceptual and aural similarities between the marks, consumers are likely to assume that the ‘233 mark is a digital brand extension or a modernised sub-brand deriving from the ‘408 mark to indicate a sub-brand of digital tracking tags.³⁹

99. I appreciate Steinling’s argument that consumers may look at “easyTag.app” in the ‘233 mark and think that it refers to something digital as “.app” could be seen as indicating a software application. However, the goods at hand are electronic tags and standard labels rather than software applications. Furthermore, I do not believe that the relevant consumers will look at “easyTag” in the ‘233 mark and, remembering the “EEZEETAGS” mark, the distinctiveness of which lies mostly in the unusual misspelling, understand it as being economically associated. I do not see a logical reason for Steinling to change its unusual misspelling of “EEZEE-” to the ordinary dictionary word “easy”, along with adding “.app” for electronic tags to create a sub-brand. Steinling also submits that the strapline in the ‘233 mark is likely to further exacerbate the likelihood of indirect confusion in that the relevant consumers will perceive the “EEZEETAGS” mark as being part of the same “family of brands” referred to in the strapline of the ‘233 mark.⁴⁰ However, for the same reasons, I do not see how “EEZEETAGS”, characterised by the unusual misspelling of “easy”, would be perceived in that way.

100. I find that indirect confusion is unlikely to occur between the respective marks at hand.

101. For the sake of completeness, I have elected to assess the likelihood of confusion between the marks at hand on the basis that the ‘233 mark’s main distinctive element is “easyTag” and that the consumers will ignore the additional elements in the mark (i.e., the “.app” and the informative strapline) in the assessment of the aural and conceptual similarity. Having reached the conclusion that neither direct nor indirect confusion is likely to occur between the marks at hand, Steinling would not be in a better position were I to assess the likelihood of

³⁸ *Liverpool Gin Distillery*.

³⁹ Steinling’s submissions in lieu at [78].

⁴⁰ Steinling’s submissions in lieu at [79].

confusion (both direct and indirect) taking into account the additional elements in the '233 mark.

CONCLUSION

102. The applications for revocation numbers **CA000508881** and **CA000508883** partially succeed for class 16 and they fully succeed for classes 7, 9, 35, 39, 40, and 42. As a result, the '408 mark and the '242 mark are, subject to any successful appeal, hereby revoked for classes 7, 9, 35, 39, 40 and 42 and they remain registered for the following goods in class 16:

Class 16 Labels of plastics; Labels, not of textile; Self-adhesive labels not of textile; all of the aforesaid being baggage labels.

103. The effective date of revocation is 20 February 2019.

104. The opposition number **OP000454597** under section 5(2)(b) fails in its entirety and application number UK00004163233, subject to any appeal, can proceed to registration.

COSTS

105. As the more successful party, EasyGroup is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 1/2023. The sum is calculated as follows:

Official fee (x2)	£400
Filing the notices of revocation, preparing a counterstatement and considering the other side's statements	£375
Considering and commenting on the other side's evidence	£800
Preparing submissions in lieu of a hearing	£500
Total:	£2,075

106. I therefore order Steinling Holding B.V. to pay easyGroup Ltd the sum of £2,075. This sum is to be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 5th day of August 2026

Andrea Rossi

For the Registrar

Annex A

Registered goods and services for UK00912163408

- Class 7 Machines and machine tools; Motors and engines (except for land vehicles); Machine coupling and transmission components (except for land vehicles); Agricultural implements other than hand-operated; Incubators for eggs; Automatic vending machines; Labellers [machines].
- Class 9 Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; Apparatus for recording, transmission or reproduction of sound or images; Magnetic data carriers, recording discs; Compact discs, DVDs and other digital recording media; Mechanisms for coin-operated apparatus; Cash registers, calculating machines, data processing equipment, computers; Computer peripherals and accessories; Computer software; Fire-extinguishing apparatus; Electronic publications, downloadable; Bar code readers; Temperature indicator labels, not for medical purposes; Electronic tags for goods; Scanners; Printers.
- Class 16 Paper, cardboard and goods made from these materials, not included in other classes; Labels of plastics; Labels, not of textile; Self-adhesive labels not of textile; Stickers [stationery]; Newsletter, books, newspapers, journals, brochures, leaflets, printed matter and other texts and publications; Bookbinding material; Photographs; Stationery; Adhesives for stationery or household purposes; Artists' materials; Paint brushes; Typewriters and office requisites (except furniture); Instructional and teaching material (except apparatus); Plastic materials for packaging (not included in other classes); Printers' type; Printing blocks; Label printers, being addressing machines (office requisites); Hand labelling appliances.

- Class 35 Advertising; Business management; Business administration; Office functions; Publicity and sales promotion relating to labels, labelling machines and printers; Retailing and wholesaling in the field of labels, labelling machines and printers; Import, export and distribution of labels, labelling machines and printers; Bringing together, for others, of labels, labelling machines and printers, enabling customers to conveniently view and purchase those goods; Business mediation in the sale and promotion of labels, labelling machines and printers and selecting and displaying labels, labelling machines and printers; Administrative handling of orders and related sales orders; Commercial information; Management of computer databases; Compilation of information into a computer database; Services of databases containing commercial and advertising information; Compilation of statistics; Market canvassing, research and analysis; Opinion polling services; Compilation of information into computer databases; Data file administration; Organisation of trade fairs and exhibitions for commercial and advertising purposes; Information and consultancy relating to the aforesaid services; All the aforesaid services whether or not provided via electronic channels, including the Internet.
- Class 39 Transport; Packaging and storage of goods; Travel arrangement; Booking of seats for travel; Passenger transport; Escorting of travellers; Transport of goods and passengers; Freightage; Logistic services in the field of transport; Tracking and tracing of shipments (transport information); Tracking, locating and surveying vehicles, ships and aircraft; Airport services (transport); Baggage handling; Information and consultancy relating to the aforesaid services; All the aforesaid services whether or not via electronic channels, including the Internet.
- Class 40 Treatment of materials; Treating and processing of paper and plastics; Digital printing; Printing; Information and consultancy relating to the aforesaid services; The aforesaid services services whether or not provided via electronic channels, including the Internet.

Class 42 Scientific and technological services and research and design relating thereto; Industrial analysis and research services; Design and development of computer hardware and software; Graphic and industrial design; Industrial and graphic design; Product development services; Testing of products; Quality control; Information and consultancy relating to the aforesaid services; The aforesaid services also via electronic channels, including the Internet.

Registered goods and services for UK00912163242

Class 7 Machines and machine tools; Motors and engines (except for land vehicles); Machine coupling and transmission components (except for land vehicles); Agricultural implements other than hand-operated; Incubators for eggs; Automatic vending machines; Labellers [machines].

Class 9 Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; Apparatus for recording, transmission or reproduction of sound or images; Magnetic data carriers, recording discs; Compact discs, DVDs and other digital recording media; Mechanisms for coin-operated apparatus; Cash registers, calculating machines, data processing equipment, computers; Computer peripherals and accessories; Computer software; Fire-extinguishing apparatus; Electronic publications, downloadable; Bar code readers; Temperature indicator labels, not for medical purposes; Electronic tags for goods; Scanners; Printers.

Class 16 Paper, cardboard and goods made from these materials, not included in other classes; Labels of plastics; Labels, not of textile; Self-adhesive labels not of textile; Stickers [stationery]; Newsletter, books, newspapers, journals, brochures, leaflets, printed matter and other texts and publications; Bookbinding material; Photographs; Stationery; Adhesives for office or household use; Artists' materials; Paint brushes;

Typewriters and office requisites (except furniture); Instructional and teaching material (except apparatus); Plastic materials for packaging, not included in other classes; Printers' type; Printing blocks; Label printers, being addressing machines (office requisites); Hand labelling appliances.

Class 35 Advertising; Business management; Business administration; Office functions; Publicity and sales promotion relating to labels, labelling machines and printers; Retailing and wholesaling in the field of labels, labelling machines and printers; Import, export and distribution of labels, labelling machines and printers; Bringing together, for others, of labels, labelling machines and printers, enabling customers to conveniently view and purchase those goods; Business mediation in the sale and promotion of labels, labelling machines and printers and selecting and displaying labels, labelling machines and printers; Administrative handling of orders and related sales orders; Commercial information; Management of computer databases; Compilation of information into a computer database; Services of databases containing commercial and advertising information; Compilation of statistics; Market canvassing, research and analysis; Opinion polling services; Compilation of information into computer databases; Data file administration; Organisation of trade fairs and exhibitions for commercial and advertising purposes; Information and consultancy relating to the aforesaid services; All the aforesaid services whether or not provided via electronic channels, including the Internet.

Class 39 Transport; Packaging and storage of goods; Travel arrangement; Booking of seats for travel; Passenger transport; Escorting of travellers; Transport of goods and passengers; Freightage; Logistic services in the field of transport; Tracking and tracing of shipments (transport information); Tracking, locating and surveying vehicles, ships and aircraft; Airport services (transport); Baggage handling; Information and consultancy relating to the aforesaid services; All the aforesaid services whether or not via electronic channels, including the Internet.

- Class 40 Treatment of materials; Treating and processing of paper and plastics; Digital printing; Printing; Information and consultancy relating to the aforesaid services; The aforesaid services services whether or not provided via electronic channels, including the Internet.
- Class 42 Scientific and technological services and research and design relating thereto; Industrial analysis and research services; Design and development of computer hardware and software; Graphic and industrial design; Industrial and graphic design; Product development services; Testing of products; Quality control; Information and consultancy relating to the aforesaid services; The aforesaid services also via electronic channels, including the Internet.