O/0978/24

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. 3866990
IN THE NAME OF YIWU KUANGSHENG TRADING CO., LTD.
IN RESPECT OF THE TRADE MARK

EASYTRAIN

IN CLASSES 10, 18 & 25

AND

THE OPPOSITION THERETO UNDER NO. 440516
BY EASYGROUP LTD

Background and pleadings

1. Yiwu Kuangsheng Trading Co., Ltd. ("the applicant") applied to register trade mark no. 3866990 for the mark shown on the cover page of this decision ("the contested mark"), in the UK on 12 January 2023. It was accepted and published in the Trade Marks Journal on 27 January 2023 in respect of the following goods:

> Class 10: *Esthetic massage apparatus; massage apparatus; medical apparatus and instruments; cupping glasses; vibromassage apparatus; respiratory masks for artificial respiration; electric massage guns; masks for use by medical personnel; protective masks for medical purposes; sanitary masks; condoms; contraceptives, non-chemical; love dolls [sex dolls]; sex toys; Uterine probes; artificial breasts; maternity belts; strait jackets; orthopaedic belts; suspensory bandages.*
>
> Class 18: *Leather leads; fastenings for saddles; bits for animals [harness]; horse collars; muzzles; collars for animals; harness straps; whips; covers for animals; harness for animals; blinders [harness]; cat o' nine tails; reins; saddlery; bridles [harness]; harness fittings; clothing for pets; straps for soldiers' equipment; knee-pads for horses; trimmings of leather for furniture.*
>
> Class 25: *Underclothing; bodices [lingerie]; corsets [underclothing]; latex clothing; adhesive bras; Dance costumes; bathing suits; headwear; hats; hosiery; sock suspenders; gloves [clothing]; veils [clothing]; girdles; Belts [clothing]; sleep masks; ear muffs [clothing]; clothing; masquerade costumes; clothing of leather.*

2. On 27 April 2023, easyGroup Ltd ("the opponent") opposed the trade mark on the basis of section 5(2)(b) and section 5(3) of the Trade Marks Act 1994 ("the Act"). This is on the basis of its earlier trade marks set out below:

> **Section 5(2)(b)**

UK comparable trade mark no. 917986557 (the "'557 mark") filing date: 19 November 2018, registration date: 7 March 2020

Relying on some of the goods registered, namely:

Class 10: *Slings for medical use; lifting appliances for invalids; slings for patient lifting hoists; slings for patient lifting; slings for lifting, moving and handling incapacitated or disabled persons; support devices for medical use; slings and harnesses for patient handling; stretchers for carrying patients; supportive medical apparatus and instruments; medical supports for legs.*

Class 22: *Slings and bands.*

EASYPET

UK comparable trade mark[1] no. 917482357 (the "'357 mark") filing date: 15 November 2017, registration date: 19 December 2019

Relying on some of the goods registered, namely:

Class 18: *Dog leashes; leashes for animals; dog clothing; pet clothing; animal carriers (bags); Bits for animals [harness]; Collars for animals; Harness for animals; Electronic pet collars; Collars for pets.*

Class 28: *Toys, games and playthings; toys for animals; toys for pet animals.*

EASYGROUP

UK trade mark no. 3666263 (the "'263 mark") filing date: 8 July 2021, registration date: 31 December 2021

[1] On 1 January 2021, the UK left the EU after the expiry of the transition period. Under Article 54 of the Withdrawal Agreement, the Registry created comparable UK trade marks for all right holders with an existing EUTM. As a result of the opponent's EUTM being registered as at the end of the Implementation Period, a comparable UK trade mark was automatically created. The comparable UK mark is now recorded on the UK trade mark register, has the same legal status as if it had been applied for and registered under UK law, and retains its original filing date.

Relying on some of the goods registered, namely:

Class 18: *Leather and imitations of leather; animal skins, hides; trunks and travelling bags; handbags, rucksacks, purses; umbrellas, parasols and walking sticks; whips, harness and saddlery; clothing for animals; Dog leashes; leashes for animals; dog clothing; pet clothing; animal carriers (bags); Bits for animals [harness]; Collars for animals; Harness for animals; Electronic pet collars; Collars for pets; Travel luggage, travel bags; travel garment covers.*

Section 5(3)

EASYJET

UK comparable trade mark no. 910584001 (the "'001 mark") application date: 24 January 2012, registration date: 9 January 2015

Relying on some services registered, namely:

Class 39: *Transport of passengers and travellers by air; travel arrangement; travel information; transportation of passengers and travellers by air; airline services; airport check-in services; airline services, baggage handling services; advisory and information services relating to the aforesaid services; information services relating to transportation services, travel information and travel booking services provided on-line from a computer database or the Internet.*[2]

3. By virtue of their earlier filing dates, the above registrations constitute earlier marks in accordance with section 6 of the Act.

4. The opponent argues that the earlier '557, '357 and '263 marks are similar to the contested mark and that the goods are identical or similar, and that there exists a

[2] The opponent sought to rely upon a broader set of services within its initial TM7 filed. However, the opponent's corresponding EU trade mark registration was subject to a successful revocation application, limiting its class 39 services to those I have set out, effective from 28 July 2020. This decision can be found under cancellation no. C 45 033. This decision was initially appealed by the opponent, but the appeal was not maintained in relation to these services and as such the revocation was confirmed as binding in relation to class 39 within appeal decision no. R 2076/2021-2. The mark relied upon in this opposition is a comparable UK mark, which mirrors the protection of the EU mark at the end of the transition period on 31 December 2020. This means that at the time the contested application was filed, the opponent may only rely upon its narrower set of services for which it maintained protection for at that date.

likelihood of confusion including a likelihood of association on the part of the public. The opponent submits the application for the contested mark should therefore be rejected on the basis of section 5(2)(b) of the Act. The opponent also argues that it holds a reputation for its services under the '001 mark, and that the average consumer would make a link between this mark and the contested mark, resulting in the applicant gaining an unfair advantage, as well as causing detriment to the reputation and the distinctive character of the earlier mark. It therefore submits that the application for the contested mark should be rejected on the basis of section 5(3) of the Act.

5. The applicant filed a counterstatement accepting that the class 18 goods covered by the earlier marks are similar to its own class 18 goods, and accepting that the opponent's '001 mark has genuinely been used for, and has a reputation for, its services in class 39. However, the applicant's counterstatement denies that the marks are similar, that the remaining goods are similar, and that the use of the contested mark would take unfair advantage of or be detrimental to the distinctive character or the reputation of the earlier '001 mark.

6. Only the opponent filed evidence in these proceedings. This will be summarised to the extent that it is considered necessary. The applicant filed written submissions during the evidence rounds, and the opponent filed final written submissions at the close of the proceedings. These will not be summarised but will be referred to as and where appropriate during this decision. No hearing was requested and so this decision is taken following a careful perusal of the papers.

7. The applicant is represented in these proceedings by Akos Suele, LL.M. The opponent is represented by Kilburn & Strode LLP.

8. 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

9. The opponent filed its evidence in the form of a witness statement in the name of Ryan Edward Pixton, dated 30 October 2023. The statement introduces 5 exhibits, namely Exhibit REP 1 to Exhibit REP 5. Exhibit REP 1 comprises a second witness statement in the name of Sir Stelios Haji-Ioannou, founder and director of the opponent. The statement is dated 4 August 2017. The evidence filed goes towards the use of the marks and the comparison of goods.

Proof of use

10. The three earlier marks relied upon under the opponent's section 5(2)(b) ground had not been registered for a period of five years at the date on which the earlier mark was filed. They are therefore not subject to the use provisions set out in section 6A of the Act. The only earlier mark subject to the use provisions in accordance with section 6A of the Act is the opponent's earlier '001 mark, relied upon under the opponent's section 5(3) ground. However, the applicant has accepted genuine use has been made of this mark, meaning the opponent was not required to file proof of its use, and it may rely on this mark in relation to all of the services for which the mark is registered.

Decision

Section 5(2)(b)

11. Section 5(2)(b) of the Act is as follows:

> "5(2) A trade mark shall not be registered if because-
>
> (b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark".

12. Section 5A of the Act is as follows:

> "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

13. The following principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG,* Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc,* Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV,* Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH,* Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM,* Case C-334/05P and *Bimbo SA v OHIM,* Case C-591/12P.

The principles

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

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

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

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

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

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

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

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

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

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

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

Comparison of the goods

14. In the judgment of the Court of Justice of the European Union ("CJEU") in *Canon*, Case C-39/97, the court stated at paragraph 23 of its judgment that:

"In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended

purpose and their method of use and whether they are in competition with each other or are complementary".

15. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [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.

16. With the above in mind, the services for comparison are as follows:

Earlier goods	**Contested goods**
The '557 mark Class 10: *Slings for medical use; lifting appliances for invalids; slings for patient lifting hoists; slings for patient lifting; slings for lifting, moving and handling incapacitated or disabled persons;*	Class 10: *Esthetic massage apparatus; massage apparatus; medical apparatus and instruments; cupping glasses; vibromassage apparatus; respiratory masks for artificial respiration; electric massage guns; masks for use by*

support devices for medical use; slings and harnesses for patient handling; stretchers for carrying patients; supportive medical apparatus and instruments; medical supports for legs. Class 22: *Slings and bands.*	*medical personnel; protective masks for medical purposes; sanitary masks; condoms; contraceptives, non-chemical; love dolls [sex dolls]; sex toys; Uterine probes; artificial breasts; maternity belts; strait jackets; orthopaedic belts; suspensory bandages.* Class 18: *Leather leads; fastenings for saddles; bits for animals [harness]; horse collars; muzzles; collars for animals; harness straps; whips; covers for animals; harness for animals; blinders [harness]; cat o' nine tails; reins; saddlery; bridles [harness]; harness fittings; clothing for pets; straps for soldiers' equipment; knee-pads for horses; trimmings of leather for furniture.* Class 25: *Underclothing; bodices [lingerie]; corsets [underclothing]; latex clothing; adhesive bras; Dance costumes; bathing suits; headwear; hats; hosiery; sock suspenders; gloves [clothing]; veils [clothing]; girdles; Belts [clothing]; sleep masks; ear muffs [clothing]; clothing; masquerade costumes; clothing of leather.*
The ‘357 mark Class 18: *Dog leashes; leashes for animals; dog clothing; pet clothing;*	

animal carriers (bags); Bits for animals [harness]; Collars for animals; Harness for animals; Electronic pet collars; Collars for pets. Class 28: Toys, games and playthings; toys for animals; toys for pet animals.	
The '263 mark Class 18: *Leather and imitations of leather; animal skins, hides; trunks and travelling bags; handbags, rucksacks, purses; umbrellas, parasols and walking sticks; whips, harness and saddlery; clothing for animals; Dog leashes; leashes for animals; dog clothing; pet clothing; animal carriers (bags); Bits for animals [harness]; Collars for animals; Harness for animals; Electronic pet collars; Collars for pets; Travel luggage, travel bags; travel garment covers.*	

17. In this instance, the applicant has accepted there is some similarity between the class 18 goods. It is clear to me that at least some of the contested goods in that class, e.g. *collars for animals* are identical to goods upon which the opposition is based. I will therefore proceed at this stage on the basis that all of the contested goods are identical to those covered by the earlier mark. If the opposition fails even where the goods are identical, it follows that the opposition will also fail where the goods are only similar. If the opposition succeeds based on identical goods, I will revert to this point and conduct a full comparison of the goods at that stage.

Comparison of marks

18. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a 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 marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

> ".....it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion."

19. 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 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.

20. The respective trade marks are shown below:

Earlier trade marks	**Contested trade mark**
easyTravelseat (The '557 mark) EASYPET (The '357 mark) EASYGROUP (The '263 mark)	EASYTRAIN

21. The '557 mark comprises the three conjoined words easy-Travel-seat. Even though the spaces between the three words have been omitted, these are still easily

distinguishable. The words are presented in a white, slightly stylised font, inside an orange box. It is my view the most dominant and distinctive element of the mark is the three conjoined words, with the orange box playing a lesser role, and the stylisation of the text only a very small role at best in the overall impression of the mark.

22. The ‘357 mark comprises the two conjoined words EASY-PET. Again, although the space is omitted between the words, they are clearly distinguishable within the mark. The overall impression resides in the combination of the two words, that being the mark as a whole.

23. The ‘263 mark comprises the two conjoined words EASY-GROUP. As above, although the space is omitted between the words, they are clearly distinguishable within the mark. Again, the overall impression resides in the combination of the two words, that being the mark as a whole.

24. The contested mark comprises the two conjoined words EASY-TRAIN. Again, these words are easily distinguishable despite the lack of a space between them. The ‘E’ is somewhat stylised, and whilst the most dominant and distinctive element of the mark is the combination of the two words, the stylisation of the ‘E’ also plays a role in its overall impression.

Visual comparison

25. All three earlier marks share the word ‘Easy’ with the contested mark. This word is placed at the beginning of the marks, where elements tend to have more visual impact.[3] However, the stylisation of the ‘E’ at the very start of the contested mark also creates a point of visual difference between them all.

26. The ‘557 mark also includes the letters ‘tra’ following the word easy. However, it is also visually considerably longer than the contested mark, being 14 letters overall compared to the contested mark’s 9 letters, with the rest of the wording being different. It contains three distinct words as opposed to two in the contested mark. The surrounding orange box in the ‘557 mark also adds to the visual differences between

[3] *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

the marks. Overall, I find this earlier mark to be visually similar to the contested mark to between a low and medium degree.

27. The EASY element in the ‘357 mark is followed by the word PET as opposed to the word TRAIN in the contested mark. These elements are not visually similar. Considering the points of visual similarity and difference between these marks, I find them to be visually similar to a medium degree.

28. The EASY element in the ‘263 mark is followed by the word GROUP. Again, this is visually different to the word TRAIN. Considering the points of visual similarity and difference, I consider the marks visually similar to a medium degree.

Aural comparison

29. All of the marks begin with the same, two syllable word ‘EASY’. This will be pronounced in the normal way. The contested mark contains the second, single syllable word TRAIN, which will also be pronounced in the known way.

30. In the earlier ‘577 mark, the word EASY is followed by the two words and three syllables TRAVEL-SEAT. Whilst the verbal elements ‘EE-SEE-TR’ are shared between this earlier mark and the contested mark, this earlier mark is considerably longer that the contested mark, and overall I find them to be aurally similar to a medium degree.

31. The element EASY in the earlier ‘357 and ‘263 marks is followed by a single syllable word in each, albeit one with no aural similarity to the word ‘train’ in the contested mark. By virtue of the shared initial two syllable word EASY, the marks are aurally similar to just above a medium degree.

Conceptual comparison

32. The marks all begin in the same way with the word EASY. This word will be understood by the UK consumer as referring to something not being difficult or requiring little effort. This is shared across the marks.

33. However, the rest of the marks all convey a very different concept to the consumer. The earlier ‘557 mark, as a whole, conveys the concept of a seat that is easy to use

on the go, or that makes travel easier. The earlier '337 mark as a whole conveys the concept of a domesticated animal that is easy to look after, and the earlier '263 mark conveys the idea of a group of companies named EASYGROUP. The word TRAIN in the contested mark conveys the concept of a passenger or goods vehicle that runs on tracks or the process of learning or working on a skill or sport. As a whole, the contested mark conveys the concept of a train that is easy to use or access, or training that is easy to undertake, and the latter meaning is more likely to be readily construed in the context of the goods. Whilst all the marks therefore share a point of conceptual similarity through the use of the word EASY, as a whole the concept conveyed by the contested mark is different to that conveyed by the earlier marks.

Average consumer and the purchasing act

34. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer,* Case C-342/97.

35. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited,* [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

> "60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words "average" denotes that the person is typical. The term "average" does not denote some form of numerical mean, mode or median."

36. In respect of the majority of the goods, including those in classes 18, 25 and 28, consumers will primarily comprise members of the general public. In the case of the class 18 and 28 goods, these may include pet owners, who will consider practicality, suitability, durability and aesthetics when purchasing goods for their pets such as

collars, leads or toys for example. These consumers are likely to pay a medium level of attention in respect of the same. Some of the goods, such as saddlery for example, are likely to be more expensive and may be purchased less frequently than an average dog collar for example, and as such a slightly above medium level of attention may be paid to these purchases. In respect of the class 25 goods such as clothing and headgear, considerations as to the practicality, quality and aesthetics will be made, and again a medium level of attention will likely be paid by the general public when purchasing these items.

37. There will also be a group of professionals purchasing the goods in order to stock retail stores for example, and these consumers will likely pay an above medium level of attention due to the impact the correct purchases may have on their business. In addition, the goods *trimmings of leather for furniture* in class 18 are likely to be purchased by professional consumers for the making of furniture items, and factors such as the aesthetics, quality and compatibility with other materials will be considered, and a slightly above medium level of attention is likely to be paid.

38. The class 10 goods include some goods that will likely be purchased primarily by the general public, such as the massage and contraceptive items, sex toys and love dolls, and some that will likely be purchased by medical professionals, for example the respiratory masks for artificial respiration. Some, such as maternity belts, orthopaedic belts and suspensory bandages, might be purchased either by the general public or by medical professionals. Where massage items are purchased by the general public, factors such as functionality and purpose will likely be considered, and a medium level of attention will be paid to the goods. Goods such as contraceptive items might be purchased more frequently and for a lower cost than some of the other items, however, considering the potential consequences of purchasing the wrong items, it is likely a medium level of attention is still likely to be paid. Items such as love dolls and sex toys are likely to be chosen based on a person's specific tastes and preferences, and a medium level of attention will likely be paid by members of the public, whereas goods with more medical angle, such as maternity belts, orthopaedic belts and suspensory bandages are likely to warrant a slightly higher level of attention by the general public, with factors such as quality, aesthetics and suitability for body size, shape and ailment likely to be considered, and an above medium level of attention is likely to be paid.

39. Where the goods are those purchased by professionals for use in the medical profession, the level of attention paid to the purchase is likely to be at a high level, due to the potential implications of, and consequences of, using the wrong equipment.

40. Purchases are likely to primarily be visual, with goods sold online on websites or in retail or wholesale stores or via brochures. However, particularly in respect of those goods aimed at professionals, enquiries and purchases may be made over the phone, and in respect of all of the goods, the consumer may seek verbal assistance from retail or wholesale staff. As such, I cannot completely discount the aural considerations.

Distinctive character of the earlier trade marks

41. 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 *WindsurfingChiemsee* 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)."

42. All of the earlier marks will be understood by the consumer as being the sum of two or more English words, the first of which being ‘easy’. As set out previously, the word ‘easy’ will be clearly understood by the consumer as describing something that is not difficult or that requires little effort. As such it has no distinctive character alone, due to its ability to describe a characteristic of the goods themselves (i.e. that they are easy to use). Within its final written submissions, when arguing it holds a family of marks, the opponent states:

> “In this case, all of the earlier marks have the word “easy”, followed by a term allusive of the goods and services offered.”

43. I accept the opponent’s view that that the earlier ‘557 and ‘357 marks comprise the word ‘EASY’ followed by a word that also is either descriptive or allusive of the goods upon which the opponent relies. The marks therefore appear to convey to the consumer a message that the goods in question will be straightforward and easy to use, or they will assist in making the consumer’s task easier. I do not consider there to be an element that is particularly distinctive in either of these earlier marks, and the distinctiveness lies in the chosen combination of words. Overall, the earlier ‘557 and ‘357 marks have no more than a low level of distinctive character inherently. I do not consider the use of the orange box or stylisation in the earlier ‘577 mark to increase its inherent distinctiveness beyond its low level.

44. In case I am wrong to accept the opponent’s concession as to the allusiveness of the second element of the earlier marks in relation to *all* of the goods, I note that should the second element be considered to have no connection to some of the goods relied upon, it will be the second element of the marks that holds the higher level of distinctive character. In those cases, the ‘557 and ‘357 marks will be inherently distinctive to a medium degree.

45. In respect of the earlier ‘263 mark, again I note the opponent’s concession that GROUP is allusive of the goods for which it is registered, and for the same reasons set out above, I find the distinctiveness of this earlier mark to be inherently low on this basis. However, if I am wrong in this instance to accept the opponent’s concession as to the allusiveness of GROUP in respect of the goods, it is in any case my view that it conveys to the consumer the idea of a ‘group’ of companies, which is not a particularly

distinctive concept. As a whole, the mark appears to convey that the goods are the product of an entity named EASYGROUP. Again, the distinctiveness lies in the chosen combination of the words, and I find the earlier mark to have only a fairly low level of inherent distinctive character in relation to the goods.

46. The opponent has filed evidence in these proceedings, and as such I must consider if the distinctiveness of the earlier marks has been enhanced through use made of the same. When considering if the distinctiveness of a mark has been enhanced through use, it is the perception of the UK consumer at the relevant date, that being the filing date of the contested mark, that is key. I will consider the evidence filed relating to each earlier mark in turn below.

47. Exhibit REP 2 is a print out from the website easy.com dated 25 October 2023. This references the mark 'easyTravelseat' stating it has been part of the 'easy' family of brands since 2018. There is no additional evidence showing the mark being used or showing that it has been used in relation to the goods relied upon. The distinctiveness of this earlier mark has therefore not been raised above its inherent level.

EASYPET

48. The above mark is mentioned only on the print out provided and detailed above at Exhibit REP 2. This does not confirm when easyPet became part of the 'easy' family of brands. There is no evidence showing the use of this mark prior to the relevant date, and thus no evidence that the distinctiveness of this mark will have been enhanced above its inherent level.

EASYGROUP

49. Exhibit REP 1, that being the witness statement of Mr Haji-Ioannou, references the above mark. In this statement, Mr Haji-Ioannou explains that a company by the name of easyGroup (UK) Limited was set up in 1998 in order to "explore and incubate new

ventures and to extend the EASY brand".[4] He also confirms a separate company by the name of easyGroup IP was incorporated in August 2000, changing its name to easyGroup Limited in May 2014. This company was set up for the purpose of holding and licensing the EASY family of brands.[5] There is no reference in this statement or in the evidence as a whole to the mark EASYGROUP being used in relation to any of the goods relied upon by the opponent under this mark. The evidence therefore does not show that the distinctiveness of the same has been enhanced in relation to the goods relied upon.

Family of marks argument

50. Within its final written submissions, the opponent argues:

> "When the opposition to a trade mark is based on several earlier marks and those marks display characteristics which give grounds for regarding them as forming part of a single 'series' or 'family' a likelihood of confusion may be created by the possibility of association between the opposed trade mark and the earlier marks forming part of the series. The likelihood of association described above may be invoked only if two conditions are cumulatively satisfied. Firstly, the proprietor of a series of earlier registrations must furnish proof of use of, at the very least, of a number of marks capable of constituting a 'series'. This has been shown above. Secondly, the trade mark applied for must not only be similar to the marks belonging to the series, but also display characteristics capable of associating it with the series. In this case, all of the earlier marks have the word "easy", followed by a term allusive of the goods and services offered. They therefore constitute a series. The opposed sign follows this pattern. The semantic content that is omnipresent in the earlier marks is also present in the opposed sign. Therefore, the opposed sign displays the relevant characteristics which might give grounds for regarding it as belonging to the opponent's family of marks. As both of the requisite conditions for successfully relying on the claim for a 'family of marks' are fulfilled, the

[4] See paragraph 30 of the witness statement of Mr Haji-Ioannou
[5] See paragraph 30 of the witness statement of Mr Haji-Ioannou

Opponent's claims that there is a likelihood of confusion because of the family of marks is a relevant consideration."

51. I note at this point that the opponent's final submissions have been written from the standpoint that its 5(2)(b) ground is based on 7 earlier rights. However, following its original TM7, the opponent was asked by the Tribunal in a letter dated 15 May 2023 to streamline its pleadings to reflect its best case. The opponent subsequently reduced the number of rights relied upon under section 5(2)(b) to the three earlier marks set out within this decision. It is these rights only upon which the opponent's opposition under this ground now relies.

52. I also note at this stage that the reliance on a family of marks was not pleaded. If the opponent wished to rely on this argument under this ground, it is required to set this out within its pleadings.[6] Notwithstanding this point, I disagree in any case that the opponent has filed sufficient evidence to show a family of marks. In order for a family of marks argument to succeed, the trade marks constituting that family must be present on the market.[7] As mentioned, there is no evidence that the '557 or '357 marks have been used. In respect of the earlier '263 mark, I note the opponent's claim that "easyGroup was not just a corporate or legal vehicle, it is the owner and creator but also a member of the EASY family of brands and became recognised in its own right."[8] However, it is not clear from the evidence filed that it has been used as a trade mark for the goods relied upon, rather than as the name of a commercial entity under which various trade marks are owned, controlled and licensed. In any case, use of this mark alone could not support the opponent's reliance on a family of marks argument in this case. For the reasons set out, there is no need for me to factor any sort of 'family argument' into my global assessment below.

GLOBAL ASSESSMENT – Conclusions on Likelihood of Confusion

53. Prior to reaching a decision under section 5(2)(b), I must first consider all relevant factors, including those as set out within the principles A-K at paragraph 13 of this decision. I must view the likelihood of confusion through the eyes of the average

[6] Case C-16/06P *Les Éditions Albert René Sàrl* v *OHIM*, at [100]-[101]
[7] *Il Ponte Finanziaria SpA v OHIM*, Case C-234/06
[8] See paragraph 41 of the witness statement of Mr Haji-Ioannou

consumer, 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 they have kept in their mind. I must consider the level of attention paid by the average consumer, and consider the impact of the visual, aural and conceptual similarities of the marks by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. I must consider that the level of distinctive character held by the earlier mark will have an impact on the likelihood of confusion. I must remember that the distinctiveness of the common elements is key.[9] I must keep in mind that a lesser degree of similarity between the goods may be offset by a greater degree of similarity between the marks, and vice versa. I must also consider that both the degree of attention paid by the average consumer and how the goods are obtained will have a bearing on how likely the consumer is to be confused.

54. There are two types of confusion that I may find. The first type of confusion is direct confusion. This occurs where the average consumer mistakenly confuses one trade mark for another. The second is indirect confusion. This occurs where the average consumer notices the differences between the marks, but due to the similarities between the common elements, they believe that both products derive from the same or economically linked undertakings.[10]

55. In *Duebros Limited v Heirler Cenovis GmbH,* BL O/547/17, Mr James Mellor Q.C. (as he then was), as the Appointed Person, stressed that a finding of indirect confusion should not be made merely because the two marks share a common element. In this connection, he pointed out that it is not sufficient that a mark merely calls to mind another mark. This is mere association not indirect confusion.

56. I will begin by considering the likelihood of direct confusion between the marks. I consider in this instance that I have proceeded on the basis that the goods are identical. I found the attention paid to the goods would vary from medium to high. I

[9] See *Kurt Geiger v A-List Corporate Limited*, BL O-075-13, in which Mr Iain Purvis Q.C. as the Appointed Person pointed out that the level of 'distinctive character' is only likely to increase the likelihood of confusion to the extent that it resides in the element(s) of the marks that are identical or similar.
[10] *L.A. Sugar Limited v Back Beat Inc*, BL O/375/10

found the purchasing process to be mainly visual but that I could not discount aural factors completely. I found all the marks to be visually similar to either a low to medium degree or a medium degree, and I found the marks to be similar aurally either to a medium degree or just above a medium degree. Whilst the concept of something being easy was shared across all of the marks, the overall concept conveyed by each of the earlier marks differed from that of the contested mark. I found all three of the earlier marks to have either a low degree of distinctive character inherently, or if I was wrong in making that finding based on the opponent's submission, in some cases they will have a medium degree of distinctive character. However, in any case I found that alone, the shared element 'easy' was not distinctive. I did not find the distinctive character of any of the earlier marks had been enhanced through use. Considering all of these factors, it is my view that the differences between the marks are too great to go unnoticed or be forgotten by the average consumer, and I do not find a likelihood of direct confusion between the marks.

57. I therefore go on to consider the likelihood of indirect confusion. In *L.A. Sugar* (cited above) Mr Iain Purvis Q.C. (now K.C.), as the Appointed Person set out three examples of when indirect confusion may occur as below:

> 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)."

58. I note that the examples above were intended to be illustrative and are not exhaustive. I also keep in mind *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, in which Arnold LJ referred to the comments of James Mellor Q.C. (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at [16] that "a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion". Arnold LJ agreed, pointing out that there must be a "proper basis" for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

59. I consider afresh all of the factors set out previously at this stage. I do not find that this case fits neatly into one of the categories set out in *L.A. Sugar*, although I remind myself that this is not determinative. I consider, in this instance, that all of the earlier marks in addition to the contested mark are made up of two or more distinguishable words, the first of which is EASY. I note in the case of all of the marks, the words following 'EASY' are not particularly, or at all, distinctive in and of themselves in the context of the goods. However, nor is the element EASY. I found the distinctiveness of the marks to lie in the combination of the words chosen, and I do not consider the word EASY to hold independent distinctive significance in the earlier marks or in the contested mark. I consider that, if I was wrong to make the finding that the second element is allusive in relation to all of the goods, I found the second word to be the more distinctive element of the earlier marks. However, in my view this does not assist the opponent, as it will make the presence of the non-distinctive element 'EASY' even less likely to be relied upon as an indication of origin across the marks. Whilst I note the opponent's arguments, that the marks all follow the same formulation, using the word EASY plus another word to form a neologism, I do not find this alone particularly convincing considering the other factors at play. Having carefully considered all of the factors of this case, it is my view that even if the consumer were to notice the existence of the word EASY in the same position in one of the earlier marks and in the contested mark, they would not assume, even where identical goods are involved, that this is likely to indicate that all of the goods derive from the same economic entity. Rather, it is my view that if they were to notice this similarity, it would be put down to coincidence on the basis that two unconnected entities may very easily choose the same common

and non-distinctive word to use within their different marks. I therefore find no likelihood of indirect confusion in relation to any of the earlier marks.

Section 5(3)

60. The relevant statutory provisions are as follows:

Section 6A:

"(1) This section applies where

(a) an application for registration of a trade mark has been published,

(b) there is an earlier trade mark of a kind falling within section 6(1)(a), (aa) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and

(c) the registration procedure for the earlier trade mark was completed before the start of the relevant period.

(1A) In this section "the relevant period" means the period of 5 years ending with the date of the application for registration mentioned in subsection (1)(a) or (where applicable) the date of the priority claimed for that application.

(2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.

(3) The use conditions are met if –

(a) within the relevant period the earlier trade mark has 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, or

(b) the earlier trade mark has not been so used, but there are proper reasons for non- use.

(4) For these purposes -

(a) 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

(b) 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.

(5)-(5A) [Repealed]

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services.”

61. As the earlier mark relied upon under this ground is a comparable mark, paragraph 7 of Part 1, Schedule 2A of the Act is also relevant. It reads:

“7.— (1) Section 6A applies where an earlier trade mark is a comparable trade mark (EU), subject to the modifications set out below.

(2) Where the relevant period referred to in section 6A(3)(a) (the "five-year period") has expired before IP completion day—

(a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in section 6A(3) and (4) 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 section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM ; and

(b) the references in section 6A to the United Kingdom include the European Union".

62. The relevant case law can be found in the following judgments of the CJEU: Case C-375/97, *General Motors,* Case C-252/07, *Intel,* Case C-408/01, *Adidas-Salomon,* Case C-487/07, *L'Oreal v Bellure* and Case C-323/09, *Marks and Spencer v Interflora* and Case C-383/12P, *Environmental Manufacturing LLP v OHIM.* The law appears to be as follows:

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

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

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

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

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

(f) the more immediately and strongly the earlier mark is brought to mind by the later mark, the greater the likelihood that use of the latter will take unfair

advantage of, or will be detrimental to, the distinctive character or the repute of the earlier mark; *L'Oreal v Bellure NV*, paragraph 44.

(g) Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark, and requires evidence of a change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious risk that this will happen in future; *Intel,* paragraphs 76 and 77 and *Environmental Manufacturing*, paragraph 34.

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

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

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

Spencer v Interflora, paragraph 74 and the court's answer to question 1 in *L'Oreal v Bellure).*

63. An opposition based on section 5(3) of the Act can only be successful via the establishment of several individual elements, which together may form the basis of a successful claim. To be successful on this ground, the opponent must prove that the earlier mark relied upon has a reputation amongst a significant portion of the public. It must also be established that the marks are similar. If it is found both that the marks are similar and that the earlier mark holds a qualifying reputation it must then be shown that this reputation, combined with the similarity between the marks, will result in the relevant public establishing a link between the marks. A link may be found on the basis that the later mark brings the earlier mark to mind. Importantly, if all three of these elements have been established, it must then be shown that the link made by the public will result in, or will be likely to result in, one of the pleaded types of damage.

64. The relevant date for consideration under section 5(3) of the Act is the application date of the opposed mark, that being 12 January 2023.

Reputation

65. Under this ground, the opponent has relied upon its earlier '001 mark EASYJET only. As a reminder, within its TM7, the opponent claims to have a reputation under this mark in respect of its class 39 services, which at the date on which the application was filed comprise:

> Class 39: *Transport of passengers and travellers by air; travel arrangement; travel information; transportation of passengers and travellers by air; airline services; airport check-in services; airline services, baggage handling services; advisory and information services relating to the aforesaid services; information services relating to transportation services, travel information and travel booking services provided on-line from a computer database or the Internet*

66. Within its pleadings, the opponent states:

> "The Opponent's mark enjoys a significant reputation in both the UK and the EU for travel related goods and services."

67. Later on within its pleadings, the opponent submits:

> "The Opponent enjoys a significant reputation in the UK for great-value, customer-friendly goods and services."

68. Within its counterstatement, the applicant states:

> "It is accepted that
>
> […]
>
> - the earlier mark Easyjet has reputation in class 39 for the claimed services and that it has been genuinely used for these."

69. I take the applicant's statement above as an acceptance of the opponent's pleadings that it had a significant reputation under its mark, in the relevant territory and at the relevant date, for the services relied upon. There is nothing in the counterstatement to indicate that the opponent's claim that it has a reputation for "great-value customer-friendly […] services" is disputed. Consequently, I proceed on the basis that this too is accepted.

Link

70. I will now move on to consider if there will be a link made between the marks, with consideration to the relevant factors as set out in *Intel.*

The degree of similarity between the conflicting marks

71. As previously outlined, the most dominant and distinctive element of the contested mark is the combination of the two words, but the stylisation of the 'E' also plays a role in its overall impression.

72. The earlier mark under this ground comprises the two words EASY and JET. These have been conjoined but are easily distinguishable from one another. It is in the combination of these words that the overall impression resides.

73. Visually, the marks coincide through the use of the word EASY. They differ by way of the second part of each mark, namely JET vs TRAIN, and due to the stylisation of the E in the contested mark. Overall, the marks are visually similar to a medium degree.

74. Aurally, both marks begin with the same two-syllable word that will be pronounced in the known way. They both end with a single-syllable word, although ones that bear little resemblance to each other. Overall, the marks are aurally similar to just above a medium degree.

75. Conceptually, both marks begin in the same way with the word EASY, which will be understood by the UK consumer as referring to something not being difficult or requiring little effort. However, overall, the earlier mark conveys the concept of a train that is easy to use or access, or training that is easy to undertake (the latter meaning being more likely to be readily construed in the context of the goods), whilst the earlier mark conveys the concept of a jet plane that is easy to use or access. Whilst the marks share a point of conceptual similarity on the basis they both include the word EASY, the overall concept conveyed by each mark is different.

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

76. The contested goods clearly have no similarity with the services for which it has been agreed that the opponent has a reputation. They are in completely different sectors, and the only overlap is on the basis that some of the contested goods and the earlier services may both be used by members of the general public.

The strength of the earlier mark's reputation

77. It has been accepted that the earlier mark has a significant reputation for the services in class 39.

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

78. As previously set out, the word ‘easy’ will be clearly understood by the consumer as describing that something is not difficult or that requires little effort, and as such it is descriptive. Further, the word JET is not distinctive in relation to the opponent’s services, particularly its air travel related services. The distinctiveness of the earlier mark is held in the combination of the two words, but it remains inherently low.

79. The opponent has filed evidence of use of its mark. This is included within Exhibit REP1, the witness statement of Mr Haji-Ioannou. I note in this instance, the witness statement filed is dated 4 August 2017, and as such any relevant information provided is at least five years old at the relevant date of 12 January 2023 when the contested mark was filed. However, notwithstanding this, I note the statement identifies that the airline was incorporated in 1995 and began domestic flights in the same year.[11] International flights began in 1996.[12] Between 1 February 2010 and 31 January 2017 the number of passengers increased from over 50 million a year to over 70 million a year.[13] In 2016 the airlines website had over 168 million users and had over a billion page views. Up until the end of July 2017, the site had had nearly 87 million users and over 900 million page views that year. The annual turnover under the mark was 3.45 billion in 2011, and 3.85 billion in 2012.[14] Total revenue for 2013 is given as 4.26 billion and it was 4.25 billion in 2014.[15] By 2014 the airline operated 675 routes, 399 of which were either to or from the UK.[16] It is my view that sum of the evidence establishes a that the distinctive character of the earlier mark had been enhanced to a high level as of 2017. However, I also note that a significant amount of time had lapsed between this time and the relevant date. Whilst I consider that the opponent’s position in the market may have altered to an extent during this time, I note the applicant has not suggested anything to this effect, accepting a reputation under the mark at the relevant date (although I note distinctiveness and reputation are not synonymous) and I am willing to accept that considering the opponent’s position in 2017, the distinctiveness of the earlier mark will have remained high at the relevant date. However, I note here

[11] See paragraph 46 of the witness statement of Mr Haji-Ioannou
[12] See above.
[13] See paragraph 48 of the witness statement of Mr Haji-Ioannou
[14] See paragraph 57 of the witness statement of Mr Haji-Ioannou
[15] See above.
[16] See above.

it is the distinctiveness of the mark as a whole that has been increased to this level, and not that of the individual elements, either EASY or JET.

Whether there is a likelihood of confusion

80. Having considered the factors in this case, particularly the differences between the marks and the lack of distinctiveness in the common element, in addition to the major differences between the goods and services, even accounting for the opponent's significant reputation under the mark I do not find a likelihood of confusion to be present.

81. I remind myself at this stage that finding similarity between the goods and services, or indeed a likelihood of confusion, is not required in order to find a link would be made between the marks. However, the closeness of the goods and services is one factor to take into account when considering if the use of the later mark would bring the earlier mark to mind. Again, I have considered the factors of this case, including the overall differences in the conceptual meaning of the marks and the lack of distinctiveness of the common word easy, and the major differences between the goods and services, and it is my view that there will be no link made between the marks in this instance. The opposition based on section 5(3) of the Act therefore fails.

82. I note very briefly at this stage that the opponent has again referenced its "family of brands" within its final written submissions under this ground. However, the opponent has relied upon the single mark EASYJET in this instance, and as such I have no basis on which to further consider this argument under this ground.

Final Remarks

83. The opposition has failed in its entirety and, subject to any successful appeal, the application may therefore proceed to registration for all of the goods applied for.

COSTS

84. The applicant has been successful and is entitled to a contribution towards its costs. In accordance with Tribunal Practice Notice 1/2023, in the circumstances I

award the applicant the sum of £1050 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Reviewing the TM7 and preparing and filing the TM8 and counterstatement:	£350
Considering the other side's evidence and preparing written submissions in response:	£700
Total:	**£1050**

85. I therefore order easyGroup Ltd to pay Yiwu Kuangsheng Trading Co., Ltd. the sum of £1050. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 14th day of October 2024

Rosie Le Breton

For the Registrar