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Case No: IL-2022-000014

IL-2023-000161

**IN THE HIGH COURT OF JUSTICE**

**CHANCERY DIVISION**

**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**

**INTELLECTUAL PROPERTY LIST (ChD)**

Royal Courts of Justice, Rolls Building

Fetter Lane, London, EC4A 1NL

Date: 11/09/2024

**Before :**

**THE HONOURABLE MR JUSTICE FANCOURT**

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**Between :**

**EASYGROUP LIMITED**

**Claimant**

**- and -**

**(1) EASYFUNDRAISING LIMITED**

**(2) THE SUPPORT GROUP (UK) LIMITED**

**(3) IAN WOODROFFE**

**(4) PALATINE PRIVATE EQUITY LLP**

**Defendant**

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**Michael Edenborough KC and Jamie Muir Wood (instructed by Edwin Coe LLP) for the  
Claimant**

**Emma Himsworth KC and Chris Aikens (instructed by Hansel Henson Ltd) for the  
Defendants**

Hearing dates: 14, 17, 18, 21, 24 June 2024  
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**Approved Judgment**

**amended under the slip rule on 13 September 2024**

This judgment was handed down remotely at 10.30am on Wednesday 11 September 2024 by  
circulation to the parties or their representatives by e-mail and by release to the National  
Archives

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## Mr Justice Fancourt:

### Introduction

1. The Claimant is a company controlled by Sir Stelios Haji-Ioannou (“Sir Stelios”), which administers or licenses various companies that trade under the “easy+ brand”, such as easyJet, which is the largest and perhaps the best known of them.
2. By “easy+ brand” I mean businesses administered or licensed by the Claimant that use a compound trading name, comprising the prefix “easy” (all lower case) followed without a space by a word (starting with a capital letter) that identifies or relates to the field of operation of the company (*e.g.* easyHotel, easyRentacar).
3. The Claimant owns a large number of registered trade marks for the brand names. It has sued the Defendants principally for infringement of some of those marks.
4. In their most well-known form, the marks are highly distinctive (pantone 021C orange background and white lettering in Cooper Black font: see the example of the Claimant’s own trade mark at [17] below), but not all the marks are coloured and some are word marks of relatively low distinctiveness. There are 9 different trade marks that the Claimant alleges have been infringed. The Claimant also brings a passing off claim in relation to the goodwill of each of the licensees, including in relation to Easylife, which became one of the Claimant’s brands only in 2022.
5. The First Defendant (“EFL”) is a company founded in about 2003 by the Third Defendant, Mr Woodroffe, which operates a website ([www.easyfundraising.org.uk](http://www.easyfundraising.org.uk)). This is a platform for members of the public (“supporters”) to use to click through to various retailers’ websites and then buy goods or services from them. There are now thousands of retailers or providers (“retailers”) who advertise on or participate in the platform, with links to their own websites. The supporters use the platform with the knowledge and intention that a small part of their total spend will then be remitted by each retailer to EFL (“the commission”), which in turn then passes on some of that commission to the charity or good cause that the supporter has registered on the platform as their chosen cause.
6. In about November 2005, the First Defendant started to trade using the sign “easyfundraising” in the following form:

**easyfundraising**

7. It changed its trading sign in September 2015, as follows:



and again in June 2022 to this:



8. All 3 signs, which I will refer to as “the EF Sign”, the “2015 EF Sign” and the “2022 EF Sign” and the plain word sign EASYFUNDRAISING (collectively, “the Signs”) are alleged to have infringed various of the Claimant’s marks from the respective dates when they were first used.
9. There is also a different sign, easysearch, which EFL started to use in May 2007 in the following format, as and in connection with an online search engine:



and from September 2009 EFL started to use the handle @easyuk on social media. These too, and the plain word sign EASYSEARCH, are alleged to have infringed the same marks owned by the Claimant.

10. EFL is not a registered charity or a not-for-profit organisation. Nor does it pass on all the commission to registered charities. It is a business and retains about 50% of the commissions paid by advertisers and the entirety of further income that it receives for advertisements on its website, or other promotional material.
11. Nevertheless, since its inception, EFL has been able to pass on donations of over £50 million to charities and other good causes, and is expected to generate a further £6.5 million of donations in 2024.
12. In the interests of even-handedness, it is appropriate to note that the Claimant also passes on (less visibly) substantial sums to a charitable foundation chaired by Sir Stelios. For the year 2023, this amounted to £15.4 million and in 2022 £10.5 million. One difference between the respective donations is in the character of non-charitable good causes that EFL supports, which the Claimant does not. I will return to that later in connection with the allegations of damage to reputation that the Claimant makes. Another difference is that Sir Stelios and his foundation decide which charities benefit from the Claimant’s donations, whereas the supporters decide which good causes or charities benefit from the commissions paid by retailers.
13. The Second Defendant is a company that owns the shares in the First Defendant, but is otherwise of no significance for the issues to be decided in this case.
14. It is accepted for the purposes of this case that the Second Defendant and Mr Woodroffe will be jointly and severally liable for any infringement (or passing off) that the Claimant proves.
15. The Fourth Defendant (“Palatine”) is a private equity firm, which manages (among others) two funds that first invested in the First Defendant in 2020. The Claimant alleges that Palatine is jointly and severally liable for the First Defendant’s torts, but Palatine denies any such liability on the basis that it has no control over EFL’s activities and did not direct them.

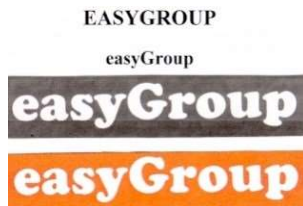
## The Trade Marks

16. The Claimant relies on 9 different registered trade marks in this claim.
17. The following marks were registered before November 2005, which is the time of the first infringement alleged by reference to use of the EF Sign:
  1. EASYJET (class 39 – broadly transport, vacations, travel, and tourism: the exact specification does not matter in this case) (No. UK2016785) (“the first easyJet mark”);
  2. easyHotel / EASYHOTEL (class 42 – “hotel services; providing hotel accommodation; reservation services for hotel accommodation”) (No. UK2246286B);
  3. easy.com (class 38 – “electronic mail services”) (No. UK2247942);



(class 36 – broadly financial services, and the exact terms of the specification do not matter) (No. UK2265184);

5.



(class 35 – “the commercial administration and management of the licensing of goods or services, including the administration and management of brand licences; the provision of general support, marketing, advertising, administration and management services to licensees of goods or services”) (No. UK2294415);

6.



(Class 35 – “advertising services; promotion services; the bringing together, for the benefit of others, of a variety of goods, enabling customers to conveniently view and purchase these goods from a general merchandise catalogue by mail order or by means of telecommunications; the bringing together, for the benefit of others, of a variety of goods, enabling customers to conveniently view and purchase those goods from a general merchandise internet web site”) (No. UK903367695) (“the first easylife mark”).

18. The Easylife business was not in fact controlled or licensed by the Claimant, nor was it a part of the easy+ brand, at this time: the name and sign had been used by another company, Easylife Ltd, since 2000, and control of the brand was only acquired by the Claimant in July 2022, in consequence of litigation.
19. The same 6 marks are relied on and alleged to have been infringed by EFL's use of the **easysearch** sign from May 2007 and by the **@easyuk** handle from September 2009.
20. In January 2012, easyGroup applied for the EASYJET word mark to be registered (which it subsequently was) for class 35 retail services, specified as: "retail services connected with the sale of food and drink, preparations and substances for use in the care and appearance of the hair, lips, face, skin, nails and eyes, cosmetics, perfumes, fragrances, colognes and scents, sun-screening and tanning preparations, sunglasses, jewelry [sic], watches, purses, purses, wallets, pouches and handbags, games". This is the seventh mark relied on in this claim. I shall refer to it as "the second easyJet mark".
21. In January 2016, a business called Easy Networks Ltd filed an application for the following mark to be registered (which it subsequently was, as mark UK3143777) for class 38 "internet access services; internet services provider (isp) services":



This is the eighth mark. Control over Easy Networks' use of the mark was acquired by the Claimant in about January 2019, also in consequence of litigation.

22. All of the above 8 marks are alleged to have been infringed by use of the 2015 EF Sign, from September 2015.
23. Finally, in September 2020, Easylife applied for the registration of a word mark (the ninth mark, UK3532904), **easylife** (and **Easylife**), for class 35 services, specified as follows:

" advertising and marketing services; retail services including on-line retailing, ... retail services conducted by mail order, all connected with the sale of ....[various retail goods, the exact contents of which is immaterial]; wholesale services, retailing through the medium of broadcasting, all connected with the sale of .... [various retail goods, the exact contents of which is immaterial]"

("the second easylife mark")

24. All of the above 9 marks are alleged to have been infringed by the 2022 EF Sign, from June 2022.
25. Although EFL used the EF Sign from 2005, it did not apply to register the sign as a trade mark until February 2012. It was registered as an EU trade mark and, as a result of the legal consequences of Brexit, an identical UK trade mark was created on 1 January 2021 ("the first EF Mark"). In October 2018, EFL applied to register the word mark

“EASYFUNDRAISING” as a UK trade mark, and the UKIPO eventually accepted that the word had acquired distinctive character and registered it (“the second EF Mark”).

### **Common ground**

26. There is no dispute about the dates at which the allegations of infringement and passing off fall to be assessed: they are the dates stated in [6] to [9] above, in relation to the various Signs.
27. It is admitted by the Defendants that at the relevant dates:
- i) the first easyJet mark had a reputation in relation to airline services;
  - ii) the easyHotel mark had a reputation by 2015 (i.e. by the date of use of the 2015 EF Sign) in relation to hotel services and providing hotel accommodation, but not for “reservation services for hotel accommodation”;
  - iii) the second easylife mark had a reputation by 2022 in relation to “on-line retail services” and “retail services conducted by mail order”, but not otherwise;
  - iv) goodwill existed in the UK in relation to the indicium “easylife” at all relevant dates when used in connection with a mail-order catalogue retail business and retail services provided through a general merchandise website.

The Defendants also admit that there was protectable goodwill in the indicium easyHotel by November 2005 and in the indicium easy.com by the same date, for a free e-mail service.

28. It is admitted by the Claimant that, at the relevant dates for assessing the validity of the Easy Networks mark and the second easylife mark (which are both challenged conditionally by the Defendants), goodwill existed in the UK in relation to the indicium “easyfundraising” when used in connection with an online platform used to generate funds for “good causes”.
29. It is agreed that the Defendants’ counterclaim for revocation for non-use of various marks falls to be assessed over the 5-year period 4 February 2017 to 3 February 2022.
30. It is agreed that liability for passing off and the validity of the easyfundraising registered marks will follow the conclusion on infringement under s.10(2), save in relation to the easylife indicium.

### **Witnesses**

31. I heard evidence from nine live witnesses on behalf of the Claimant and read one witness statement supported by a Civil Evidence Act notice. Neither Sir Stelios nor any employee of the Claimant apart from its in-house brand protection solicitor was called to give evidence. Those who were called to give evidence were:



- i) Mr Nicholas Moffatt, the Chief Commercial Officer of easyHotel, who joined that business on 1 October 2019. He was able to describe the extent of its business and what services it provides, and made some observations about easyHotel’s advertising on the easyfundraising website.
- ii) Mr Richard Gwilliam, who is the founder of Easy Networks Ltd. He explained the naming of his company, the development of its business, the history of its intellectual property portfolio, including the Easy Networks mark, and the sale of the IP rights to easyGroup in January 2019, since when Easy Networks has been a licensee of easyGroup. He also described the creation of easySim in 2023 as a subsidiary of easyNetworks and its interaction with easyfundraising.
- iii) Mr Gavin Richardson, a graphic designer who worked for the easy+ brands from 1999 to 2011 and is now a retained external consultant for easyGroup. He bravely attended court with a broken leg and was able to explain the history of easyEverything, which became easyInternetcafe, the change in easyGroup’s business from running disparate businesses to licensing them, and the start-up of easyHotel in 2004/2005.
- iv) Mr Guy Parsons, who was the CEO of easyHotel from 2015 to 2019. He sought to explain, in a rather limited way, the dealings between that business and easyfundraising, which dealings he ended in June 2018. Unlike the other witnesses, Mr Parsons was rather defensive and claimed not to remember much, except that it was Sir Stelios who decided in June 2018 to break the link with easyfundraising.
- v) Mr Chrys Chrysostomou, the managing director of Direct Response Marketing Group Limited (“DRMG”), who explained his company’s role in soliciting business in insert advertising, its business with Easylife Ltd, and from 2015 providing marketing and sales support to Easylife’s catalogue mailing business.
- vi) Mr James Oakenfold, who was UK Commercial Director of Easylife Ltd from 2018 to 2023. He described its advertising business and branding, its dealings with affiliate networks and its advertising on easyfundraising until November 2022, when easyGroup acquired Easylife’s IP portfolio and easylife became a licensee of easyGroup.
- vii) Mr Robert Wise, who has been the Operations Director of Easylife Ltd since June 2018. He described its customer relations management and marketing and its use of logos and straplines. He confirmed that its customers refer to it as “easylife”.
- viii) Mr Tony Anderson, who is a self-employed marketing consultant with a long history of working for the easy+ brands, initially with easyJet from 1995 to 1998, and who has written an “easyHistory” of the easy+ brands. He dealt at some length with the development of the brands and the creation of easyGroup (UK) Ltd in 1998 as an umbrella company that obtained the domain name “easy.com”; and the creation of easyGroup by another name in about 2000 to hold the IP of the brands. A good deal of his evidence was inadmissible, either as being irrelevant to the issues, or as being promotion of the easy+ brands, or opinion evidence, but he provided some useful background to the businesses. My impression was that the Claimant had sought to rely on his evidence rather than call Sir Stelios to explain easyGroup’s objections to easyfundraising. Mr Anderson was unable to explain

why Sir Stelios was not giving evidence. Some of Mr Anderson’s evidence about the branding, in particular the reason for the use of the prefix “easy”, was less than straightforward. He was unwilling to accept what in my judgment was obvious, namely that “easy” was first used because it was descriptive of the uncomplicated and direct way in which flights on easyJet could be booked and its services used.

- ix) Ms Holly Mottershead, the in-house brand protection lawyer at easyGroup, whose witness statement was responsive to the witness statement of Ms Heasley on behalf of the Defendants. She explained the investigations that she carried out to see if an invented good cause could be registered on the easyfundraising website.
32. Mr Chirag Patel, head of e-commerce at easyJet and formerly head of traffic acquisition at easyJet was too ill to attend court and I therefore read his witness statement as hearsay evidence. Mr Patel’s former role was in connection with increasing easyJet website “traffic”. His evidence was principally concerned with the circumstances in which, he said, AWIN, an affiliate network, had proposed and someone at easyJet must have agreed a relatively short period of promotion of easyJet on easyfundraising’s website, following the end of the Covid lockdown period. The advertisement ended in August 2021.
33. The witness statements of Angela Mullen, Miguel Santos, Nicholas Wait and Timothy Slesinger were admitted into evidence unopposed.
- i) Ms Mullen explained the in-flight retail sales business at easyJet, which was sourced from Alpha Airports Group, then Gate Retail Onboard and finally dnata, and the ability of passengers from 2017 to pre-order goods on the easyJet website.
  - ii) Mr Santos is a data and analytics manager for inflight retail at easyJet and provided some data about onboard sales. Since it is accepted that easyJet has used the second easyJet mark in connection with in-flight retail, there was no reason for the Defendants to challenge his or Ms Mullen’s evidence.
  - iii) Mr Wait has been employed by easyJet in various roles since 2011, now as Head of Proposition, which he explained was managing the ancillary revenue streams for easyJet. He explained the different partners with which easyJet operates, and its advertising services relating to seat backs, inflight magazines, and boarding passes, conducted through a partner company called “Ink”.
  - iv) Mr Slesinger is a founder and director of easyStorage. He dealt with the circumstances in which easyStorage had advertised through AWIN on the easyfundraising website and its removal from that website in November 2022.
34. To a very large extent, the facts that were covered by the Claimant’s witnesses in their evidence were not in dispute. The live witnesses were cross-examined to clarify some of their evidence and elicit evidence about other matters that they had not addressed, or not fully addressed. Subject to the comments made in [33] above, I felt that the witnesses were honest and doing their best to assist the court with their recollection of events.
35. The Defendants submit that it is not so much the evidence that the Claimant did call but the evidence that was not called that is significant in this case. They submit that there was a striking absence of evidence of:

- i) anyone who has actually been confused by the use of any of the Signs;
- ii) anyone who has made a link between the Signs and the Claimant or one of its licensees;
- iii) someone from the Claimant company to explain the extent of its awareness of the use of easyfundraising by its licensees for advertising purposes;
- iv) someone from the Claimant or its licensees to explain the damage that is alleged to have been caused to their reputation or the distinctiveness of their trade marks by use of the Signs;
- v) someone to explain why, despite letters of complaint being sent to EFL in 2011 and 2017 and the allegations of damage being caused, nothing was done to try to stop EFL from using the EF Signs before February 2022.

36. The Defendants called five witnesses:

- i) Ms Alexandra Heasley is a director of EFL, the Second Defendant and other holding and parent companies in the group structure. She joined EFL in 2017. Though she described it as a small organisation based in Lichfield, in context that was clearly intended to be a comparison with her previous employer, Virgin Money Giving. Ms Heasley explained EFL's interaction with charities and good causes in the course of its business and its fundraising model, and the signing up and vetting process for good causes. She addressed the issue of complaints by supporters, the rebranding of easyfundraising in 2022 and the attempts made to make the nature of its business clearer and to avoid any similarity with the easyGroup branding or business.
- ii) Mr Michael Miller is also a director of EFL, the Second Defendant and group companies. He is the COO of EFL. He dealt in detail in his witness statement with the relationship between easyfundraising, affiliate networks and the retailers, how retailers decide to advertise and set commission rates, easyGroup licensees' use of the easyfundraising advertising opportunities, the way in which the website works for supporters and advertisers, the payment cycle to charities and good causes, the way that the website promotes retailers, easyfundraising's "partner" network, and its status as a charity fundraiser (but not a charity).
- iii) Mr Ian Woodroffe OBE, the founder, explained the genesis of the fundraising idea, the origins of EFL, the name "easyfundraising" and the fundraising platform, the way that the business has developed in terms of ideal customer profile and work with Partners and affiliate networks, and the development of its intellectual property.
- iv) Mr James Gregson, an impact fund partner at Palatine, explained its two Impact Funds and their ESG approach to investing, their investment in EFL in 2020 and the ownership structure of the group. He explained that Palatine appointed two out of a total of nine directors to the board of the ultimate parent company of easyfundraising, but that it has no representation on EFL's or the Second Defendant's boards. He explained the extent of Palatine's step-in rights, if certain levels or indicators of EFL's business are not met, and the reasons why Palatine

did not exercise its rights in 2021 but instead decided to support the development of the easyfundraising brand, which included the 2022 re-branding and the new 2022 EF Sign.

- v) Mr David Hansel is the Defendants' litigation solicitor. He produced three appendices to his witness statement: one showing a number of UK businesses using easy+ signs or names in connection with their businesses, apart from easyGroup's licensees; a second giving examples of businesses using the adjective "easy" as a descriptive term in connection with their businesses, and a third being a list of non-charitable organisations with an org.uk internet domain (to meet an argument that this was an indication of a registered charity).
37. I found each of these witnesses to be honest and helpful. Mr Edenborough criticised Ms Heasley for being evasive and reluctant to admit matters, and for misleading the court on one point. I did not find her to be evasive or reluctant to admit matters that should properly be admitted: on some points she disagreed with Mr Edenborough's way of putting things. She admitted that the change from the 2015 EF Sign to the 2022 EF Sign could be seen, objectively, as a move closer to the appearance of the easy+ brand get up, in that yellow is closer to orange than pink is, but she denied that that was the intention; and she disputed that the 2022 EF Sign and the Claimant's trade marks were similar. She admitted, when shown it, that there was one Trustpilot review in which the word "fraud" appeared, and so her statement that no one had ever accused easyfundraising of stealing money had to be qualified to that extent. I will return later to the significance of the array of comments left by consumers on Trustpilot and the overall rating of easyfundraising by that website.
38. Once again, there was no factual issue on which there was a serious dispute between the parties, just different interpretations of the significance of various facts. This is not a case in which it is necessary for me to decide which witnesses are untruthful in their evidence. I will, however, express conclusions about the significance of certain evidence given, or the absence of certain evidence, when addressing the individual issues in the case.

### **The claims and counterclaims**

39. Despite the simplified description of the claims that I gave in the first section of this judgment, the full picture is much more complicated. The complete list of claims and counterclaims in issue is as follows, in what is (I hope) a logical order in which to address them later in this judgment:
- i) A counterclaim by EFL for revocation of the first easylife mark and the easy.com mark for non-use, and revocation of the easyHotel mark and the second EASYJET mark in part only for non-use.
  - ii) A claim for infringement of the Claimant's marks (except the easyMoney, EASY NETWORKS, second EASYJET and second easylife marks) under s.10(2) of the Trade Marks Act 1994 ("s.10(2)") as at November 2005 by use of the EF Sign, and as at May 2007 by use of the easysearch sign, or the plain word Signs.

- iii) The claim for infringement of the same marks under s.10(2) as at September 2009 by use of the @easyuk handle.
  - iv) The claim for infringement of the same marks, the second EASYJET mark and the Easy Networks mark under s.10(2) as at September 2015 by use of the 2015 EF Sign;
  - v) The claim for infringement of those same marks and the second easylife mark under s.10(2) as at June 2022 by use of the 2022 EF Sign;
  - vi) The claim for infringement of the Claimant's marks (except the Easy Networks mark, the easy.com mark, the second EASYJET mark and the second easylife mark) under section 10(3) of the 1994 Act ("s.10(3)") by the EF Sign as at November 2005 and by the easysearch sign as at May 2007;
  - vii) The claim for infringement of the same marks under s.10(3) as at September 2009 by the @easy.uk handle;
  - viii) The claim for infringement of the same marks, the second EASYJET mark and the Easy Networks mark under s.10(3) as at September 2015 by use of the 2015 EF Sign;
  - ix) The claim for infringement of those same marks and the second easylife mark under s.10(3) as at June 2022 by use of the 2022 EF Sign;
  - x) The claim for passing off EFL's business as being or being associated with that of the Claimant's licensees;
  - xi) The claim of joint and several liability against Palatine
  - xii) The counterclaim for invalidity of the Easy Networks mark and the second easylife mark.
  - xiii) The claim for invalidity or revocation of the first EF Mark and the second EF Mark.
40. Before turning to those individual claims and counterclaims, it is convenient to consider some more general issues and make findings about: the nature of EFL's business and the services that it has provided, in connection with which the Signs have been used; the development of the easy+ brands other than easyJet, and the extent to which they had established a reputation by the relevant dates (and, if so, from what date and for what services); and whether the easy+ brand has created a "family" of marks, such that each of the relevant brands has enhanced distinctive character, reputation and goodwill.

### **The Easyfundraising business**

41. Easyfundraising was the brainchild of Mr Woodroffe. In about 2003, he was thinking about matching groups of people looking for financial support and online shopping, which was then in its early days. His focus was initially on sports clubs, the idea being that they would receive a commission from retailers of home telecoms, broadband and mobile phone packages. EFL was incorporated in May 2003 under the name "Rugby

Support Ltd”. At the same time, the Second Defendant was incorporated to be a support company.

42. A first website platform was set up in 2004, under the name Organisation Support. In addition to telecoms packages, affiliate networks were used to bring in other retailers, who would advertise through the platform. By this time, Mr Woodroffe was targeting larger organisations such as the Cyclists’ Touring Club rather than small local clubs.
43. In 2005, while undergoing cancer treatment, Mr Woodroffe had the idea on which the current business is built, namely that consumers could select their own charity or good cause and then shop as a means of raising funds for it. He said:

“Fundraising is difficult, but shopping online, whilst using our tech platform to raise money, was now easy. So we combined the words fundraising and easy.”

44. He accepted that, as a result of years of serious illness and treatment, his recollection of matters in 2005 is imperfect, but he said:

“I would have heard of easyJet, as the name of a budget airline, at the time in 2005, but I don't think I had heard of the other easyGroup licensees at that point – though I can't remember for sure. What I can say for certain is that I was not looking to copy easyJet or any of the other easyGroup businesses. Nor was I trying to benefit from an association between easyfundraising and easyJet or any other business that used the word easy in its name. That simply never occurred to me, and there was no reason I can think of why I would want easyfundraising to be associated with easyJet or easyGroup. Other businesses’ names and branding did not play any role in my choosing the easyfundraising name and the blue and black branding.”

Mr Woodroffe was not challenged in cross-examination about that statement, save as to whether it was possible that in 2005 he knew about other easyGroup licensees, and he accepted that it was possible.

45. The easyfundraising website was launched in November 2005. A web cache of that site was retrieved, using the Wayback Machine. The home page enabled the user to register or log in. It had various menu options available on that page: “How it Works”, “Using This Site”, “Find a Cause”, “Register”, “Refer a Friend” and “Special Offers”. The home page stated:

“We provide a FREE fundraising service where you can shop online and raise funds for any charity, organisation, good cause or group you support at the same time.

Choose from over 150 of the UK’s best known retailers and every time you shop using the links on our site, up to **15% of your purchase price** is donated back to the cause you nominate.

It doesn’t cost anything extra to shop and raise funds in this way and as many retailers now give extra discounts when you buy online, you can even **save money!**”

46. Click buttons were provided beneath this to “register now”, “find a cause” or for “more info”. A column to the left of the page listed 24 categories of retailer, including books, CDs-dvds, clothing, accessories, games, home – garden, insurance, travel and wine. At the bottom of the page are click buttons for two “retailers of the month”, Curry’s and Field and Trek, who had special offers, and another button for “More Offers”. Various links were provided, including to BT, Amazon and PC World.
47. The “Find a Cause” page at that time listed in the region of 80 charities or good causes, including nurseries and sports clubs. There were over 150 retailers listed in 2005 and over 10,000 supporters by the end of 2006. The retailer uptake had grown significantly by making use of affiliate networks, who publish advertising on behalf of retailer clients, and they became the focus of the easyfundraising business.
48. The “How it Works” page explained how the site operated, to let the supporter order goods from the retailer at no extra cost but with up to 15% of every purchase (depending on the identity of the retailer) being donated by the retailer. The supporter would shop with the retailer by clicking on links to the retailer on the easyfundraising platform. Importantly, the following is stated:

**“Am I dealing with the retailer or with easyfundraising?**  
You still deal directly with each retailer. We simply record your visit to their website and reward your selected cause if you make any purchases.”
49. Although the wording has changed slightly over the years and the branding looks different, more recent presentations of the platform are essentially the same as the original 2005 version, and in particular include this clear explanation. Neither side suggested that the position in relation to the content of the website was materially different in 2009, 2015 or 2022, save for the different Signs used at different times.
50. The fact that the supporter is buying from the retailer alone is reinforced – indeed made very clear – by the fact that goods and services provided by retailers cannot be viewed on the easyfundraising website, and that no particular products are recommended by easyfundraising. Mr Michael Miller explained that the platform does not operate in the way that an aggregator or price comparison website does: no questions are asked about the supporter’s shopping needs or choices (other than categories); and no prices are given or offers made that the supporter can accept on easyfundraising’s website.
51. The easyfundraising website works by promoting retailers; and to proceed with any intended purchase it is necessary for the supporter to click on a link to the chosen retailer, either from a promotional advertisement, or from the retailer’s own page on the platform, or from an index of retailers of certain goods or services. The most that the supporter can do on easyfundraising’s website in this regard is select the category of goods or services that they are seeking to buy and thereby obtain a link to the websites of relevant retailers. The retailers are those who have advertised with easyfundraising, not retailers that easyfundraising has selected in response to the supporter’s use of its website.
52. To use easyfundraising to buy from the advertisers, the supporter first has to register themselves and select their chosen charity or good cause. A supporter can nominate their own good cause, which, to some extent at least, easyfundraising will then vet before registration is accepted.

53. The next step is significant. Once registered, to progress from the easyfundraising website to the retailer website, having clicked on the name of the chosen retailer, the supporter lands first on an “interstitial” page, which informs them that they are leaving easyfundraising.org.uk and moving to the retailer’s website. The interstitial page says “we’re taking you to [e.g. John Lewis & Partners]” and requires the supporter to click on “Go now”. Some interstitial pages contain a little more information than this. As an example, Moneysupermarket Home Insurance’s page states:

“Before we take you to Moneysupermarket Home Insurance  
There are some important things to know before you shop with  
MoneySuperMarket:...”

and it then sets out a recommendation about how to purchase on the Moneysupermarket site so as to generate the donation back to easyfundraising. There is a button to click on: “I understand, visit Moneysupermarket Home Insurance”.

54. There were also examples in the trial bundle of retailer pages on the easyfundraising website. These pages are accessed by selection from drop down menus or by typing a search term into a search box. The retailer pages say something about the level of donations made by the individual retailer and have one or more “Shop now” buttons to click, which will take the supporter, importantly via the interstitial page, to the retailer’s own website.
55. Some of these example pages related to easyJet holidays in April 2017 and easyHotel in March 2018. After explaining the donation level and some special offers, each page had a button to click that said “Go shopping and raise funds”, which it was not disputed would have led, through an interstitial page, to the easyJet and easyHotel websites. I will return later to the significance of the fact that some of the Claimant’s own licensees were advertising on easyfundraising.
56. I find that no supporter who was at least reasonably attentive to what they were doing could have the impression, once they had clicked through to a chosen retailer’s website, that they were still on the easyfundraising platform or were transacting a purchase with easyfundraising, or indeed with anyone other than the chosen retailer whose website they had chosen to visit.
57. In about 2015, EFL created an app, which works in essentially the same way as its website. Recently, EFL has developed a co-branded app for three of its largest fundraising partners: Macmillan, Save the Children and Dementia UK. Mr Miller explained that this process involved extensive negotiations and due diligence on the part of the charities, giving rise to multi-year contracts with EFL.
58. The Claimant relies on some of the wording of pages on the website as tending to give the impression that easyfundraising and the retailers were in a kind of partnership in providing the goods or services, or that easyfundraising took responsibility for the quality of the goods or services that were supplied by the retailers. The potential significance of this is in relation to the question of whether the services supplied by easyfundraising would be perceived as being identical or similar to those for which the Claimant’s marks are registered, an issue that arises mainly under the s.10(2) claims.



59. The documents relied on by the Claimant in this regard are assembled as Annexe 10A to the Particulars of Claim, which comprises 28 webpage views of Holiday Inn, Booking.com, Expedia, and TUI retailer pages and various category pages. Annexe 10A was introduced by way of re-re-re-amendment on 27 December 2023, following the decision of the Court of Appeal in *Easygroup Ltd v Nuclei Ltd* (as to which, see at [201] below). The page views in Annexe 10A are dated 24 November 2023 and feature the 2022 EF Sign. They relate to vacation and travel services.
60. Most of these retailer pages contain the statement “Shopping the easyfundraising way with [Holiday Inn] could not be easier”; others promote only the retailer. The booking.com retailer pages contain at one place the following statement, under the heading “Why choose easyfundraising?”:

“The clue is in the name. We make fundraising for your chosen charity super easy. Once you’re signed up with us, you can give to charity every time you shop with one of *our partner retailers*. There are more than 7,400 retailers to pick from....”

And similarly, on the Expedia page:

“You won’t have to compromise when you shop online – *we partner with* over 7,500 online retailers, selling almost everything you can buy online.”

The Travel category page contains the following under the heading “Flights Deals”:

“Fundraising couldn’t be easier if you’re shopping online for travel deals. Scroll down to browse *our top travel retail partners* such as Booking.com, Expedia, TUI, IHG, Disneyland Paris and many more....”

and other category pages have similar content. Some include statements such as:

“*we have some of the best travel insurance deals right here. Our easyfundraising partners* will give you a free donation to add to your fundraising when you buy a travel insurance deal from them.”

61. Under the Advertising Disclosure page, however, is stated:

“...retailers pay *to partner with us* because we send shoppers to their websites or brick-and-mortar stores. They may also pay us to help grow their brand....”

(emphasis in all these quotations is added by me).

62. Mr Miller accepted that the easyfundraising platform can be used to search for sellers of certain goods and services, and that supporters can search by product types.
63. Mr Edenborough submitted that this was sufficient to show that a supporter would perceive that easyfundraising was aligned with the retailer and was the retailer’s partner in supplying the goods and services. Mr Edenborough accepted that the detailed terms and conditions on the site made the distinction between the retailer and easyfundraising quite clear, but contended that the average consumer did not read the terms and conditions. That was not disputed by Miss Himsworth.

64. I accept (as did Mr Miller) that the retailer pages of some of the thousands of retailers on the platform contain these descriptions on some pages (primarily individual retailers' pages) and that the supporter looking for these goods was likely to pass through them. They do communicate something to the supporter about partnership and alignment of easyfundraising and the retailer. Whether this terminology of partnership and easyfundraising providing deals was also present on other pages in November 2023, or on pages of the website in 2005, 2009, 2015 and 2022, was not established in evidence – or, at least, if there were other web page views for other types of retailer or for other years in the voluminous trial bundles that contain similar material, I was not shown them. There is therefore some evidence that in November 2023, in relation to travel, holiday and hotel services, easyfundraising was associating itself, to some extent, with what the retailer was offering.
65. The overall journey of the average consumer who used easyfundraising as a supporter or intending supporter is however important, as context for their perception of what services easyfundraising was supplying or vouching for. It is as follows.
66. Ms Heasley explained that any supporter was most likely to have heard about the site from one of many organisations that EFL targeted, which it calls its “Partners” (such as Parentkind, Swimming England, Macmillan and Liverpool CVS), or possibly from friends, or searches on the internet, or from EFL’s targeted advertising spend. A Partner is likely to have explained to the supporter what the easyfundraising website does, and the perception of the supporter will therefore be likely to be of a connection between easyfundraising and the Partner organisation, not between easyfundraising and the retailers. The principal attraction of the site for the average consumer is the opportunity to raise money for a preferred charity or (more likely) a non-charity that is regarded as a “good cause”. As Ms Heasley said, people use the easyfundraising website because they want to raise money for their chosen cause or charity. I find that the vast majority of users of the platform would access it for that reason and I accept Ms Heasley’s evidence about how supporters would find the platform.
67. The average consumer would first register on the site and select their good cause (it is not possible to progress further than this without doing so, as Ms Heasley explained). Then, having registered, the supporter would progress through the site to find their chosen retailer, possibly attracted by the special offers or other advertising on the platform. They would click through to the retailer, having perhaps identified on the way the rate of donation, and always pass through an interstitial page; then they would shop as normal on the retailer’s website. Mr Miller explained that everything that happens between the supporter and the retailer, after clicking through, is the same as if the supporter had gone directly to the retailer’s website.
68. After the retailer has confirmed the sale to easyfundraising, easyfundraising notifies the supporter that it has “tracked” the sale. Although it may take significant time (sometimes months) for the retailer then to confirm and transfer the donation, the progress can be tracked by the supporter on the easyfundraising website. By logging in to the easyfundraising website, a supporter can see what commission has been earned, then credited, and finally paid to their chosen charity or good cause.
69. I find that an average supporter would have understood that easyfundraising was not selling them the services or goods that they clicked through the platform to purchase from the retailer. The experience of using the platform creates (and is intended to create)

distance between easyfundraising and the retailer, whatever sales jargon (“partners”, “we offer” and the like) on some pages might suggest if it were looked at in isolation. The retailers, particularly those with prominence on the platform, are themselves mostly well-known brands, or at least include many well-known brands. It is clear from using the platform that the supporter is taken to the retailer’s own website, which in most cases will be recognisable to the supporter as such, and that they are buying services or goods in the normal way from that retailer website, having passed through and left the easyfundraising website. The supporter themselves chooses the retailer and then the product on the retailer’s website, even if the easyfundraising platform assists in the supporter’s choice of a retailer for a particular product.

70. I find that the purpose of the easyfundraising website would not be misunderstood by anyone exercising a moderate degree of care, given the requirement for a supporter to register a good cause before they can proceed and the content of the main pages of the platform. They are likely to have reached the easyfundraising website in the first place because they understood that it is a means of providing a donation to a good cause. As further evidence of the absence of any misunderstanding about the roles of easyfundraising and its retailers, none of the parties, despite extensive searches during the disclosure stage, has been able to find one complaint directed to easyfundraising about the quality of goods or services purchased. Mr Miller confirmed that this had never happened. Such complaints as exist are about delay in passing on commission (or all of the commission) to the supporter’s good cause, or the non-charitable status of good causes.
71. Further, other than to provide a link to a chosen retailer and to advertise any special offers or terms that the retailer offers, the easyfundraising website does nothing to help the supporter identify the goods or services that they are looking for, provide a selection of goods and services from which to choose, or provide any information about goods or services or their prices. The supporter can only obtain that information from the retailer’s website, at which point they have been informed that they have left the easyfundraising website. Given that the website has at all times contained links to hundreds of competing retailers, and in more recent years thousands of retailers, it cannot be viewed as simply an agent for those separate businesses. In so far as the supporter may receive emails or newsletters from easyfundraising containing offers from retailers, this is in substance no different from advertising by the retailer elsewhere, *e.g.* in magazines or on other websites. The emails or newsletters do not provide a separate means of acquiring goods or services: the supporter always has to pass through and leave the easyfundraising platform to arrive at the retailer’s website.
72. While the Claimant was able to point to certain web page views on the easyfundraising website as at November 2023 relating to travel, hotel and holiday retailers, which refer to its “partners”, and that use the first person plural in discussing what is offered by them, this is not enough, in the context of the average consumer’s overall journey through the platform in 2023, to give any reasonably attentive consumer the impression that easyfundraising is a partner of the retailer, as supplier of the goods and services that the consumer buys, or that it is responsible for the provision or quality of what is purchased from the retailer. To put it another way, the average consumer would not regard the 2022 EF Sign as a badge of origin of the goods and services purchased from their chosen retailer.

73. There was no evidence of similar use of the words “partner” and “we” in earlier versions of the website, but even if it can be inferred that there probably was some such use, the same conclusion would follow: the EF Sign, the 2015 EF Sign and the 2022 EF Sign would be seen as a badge of fundraising through retail, not as a badge of origin of the goods or services purchased from the retailer.
74. So far as easyfundraising is concerned, its retailers are advertisers, acting mostly through affiliate networks and agencies, and the services provided by easyfundraising to them are advertising services. Mr Miller explained that the retailers always have control over what the affiliate networks are signing up to on their behalf, by setting parameters or by excluding certain publishers. The affiliate networks deal with the publisher (easyfundraising) and with their clients (the retailers) or the client’s own agent. Mr Miller said that the great majority of retailers who advertise through easyfundraising’s platform come to it through affiliate networks.
75. The affiliate networks provide a managed service and employ account managers to manage the relationship between publisher and advertiser, though some affiliate networks provide a “tech-only” product and no account manager. There are only two retailers that deal directly with easyfundraising: eBay and Amazon. Easyfundraising does, however, have some direct contact with its more important retailers, such as Tesco and John Lewis.
76. I accept the evidence that Mr Miller gave in this and other respects. He also explained that rates charged for ‘tenancies’ (advertising space purchased for a defined period) and the commission on purchases alike are paid through the affiliate network to easyfundraising. I was shown an example of a rate card produced for retailers, dated 2013, which described and priced the tenancy packages then on offer and additional exposure opportunities in the form of content in newsletters and emails, and it provided some marketing information about easyfundraising’s reach and success. Retailers also have control over the commission rate that is paid.
77. In effect, therefore, easyfundraising, in its retailer-facing activity, is providing advertising space to affiliate networks on behalf of their retailer clients (and to eBay and Amazon directly) in the form of retailer pages on its platform, tenancies on the general pages of the website and email and newsletter promotions to Partners and supporters, in return for commission on supporters’ purchases from those advertisers and the fees paid for tenancies and other promotions.
78. The Defendants accept that easyfundraising’s advertising and marketing services are identical to the services that were provided by Easylife Ltd, which allows advertisements to be placed in catalogues that were mailed on its behalf to customers, and on its website. The advertising services provided by easyfundraising are being provided to sophisticated business clients, usually with expert professional intermediaries, who are likely to understand exactly the nature of what easyfundraising is offering and what its business is. There was no evidence that any such client has confused easyfundraising’s business with the businesses of the easy+ brands. The only evidence, from easyGroup’s own witnesses, was to the effect that those in charge of an easy+ brand’s business might not have been aware that its employees had approved an affiliate network’s placing its advertisements with easyfundraising. That, however, is not confusion caused by the EF Signs. There was no evidence that anyone at easyGroup or any of its licensees thought that easyfundraising was an easy+ brand. It is, at best (from the Claimant’s perspective),

a lack of attention on the part of each relevant easyGroup licensee to what its affiliate agencies were doing on its behalf.

79. The evidence was that the business model of easyfundraising, and the way that the platform operates, has not greatly changed over the years since its inception, other than that the number of retailers, good causes and supporters have very greatly increased. By the end of 2023, over 238,000 good causes had registered at some stage since 2004 (over 23,000 of which were new in 2023), and over 31,000 of these were registered charities (3,820 new in 2023); over 2,700,000 supporters had registered at some stage since 2004 (over 241,000 new in 2023); and over 5,000 retailers were on the platform in 2023.
80. Mr Miller said that the 2015 re-brand was an attempt to make the website more attractive, modern and fresh, with a strap line that explained easyfundraising's core proposition of raising money when shopping online. They made sure that the design agency that they used was aware of the 2011 complaint made by easyGroup, and made clear to them that the colour orange and the sort of fonts that easyJet and easyGroup used were to be avoided.
81. Ms Heasley explained that the 2022 re-brand was motivated by a desire to modernise and to address three matters, derived from analysis of supporter feedback. First, to make clear the type of fundraising that easyfundraising does, and that it is not set up on the JustGiving model. Second, to try to remind supporters to use easyfundraising, rather than go directly to the retailer's website. And third, to communicate better the breadth of retailers on the platform. The new logo was part of that wider re-brand, she said.
82. Ms Heasley said that the choice of logo was born out of wanting to demonstrate the process of raising a donation: the 'E' roundel was used to show a stack of coins, which was a theme of the new branding, and the yellow/gold colour was chosen for that reason. The design agency were asked to run a comparison with easyGroup branding to ensure that there was no risk of straying into their territory on colours, given the existence of this claim by that time. Those working on the re-brand were very aware of the legal proceedings. Although Ms Heasley said that they were deliberately not making decisions that moved the platform towards the easyGroup brand, she accepted that yellow/gold was closer to easyGroup's orange colour than the pink of the 2015 EF Sign.
83. Mr Woodroffe developed easysearch in 2007, based on the business model and branding of easyfundraising. It was what he called a 'white label' version of a search engine, which raised money from advertisers. He said that it was never a core product and that the search engine results became patchy and the product much less usable. He said that after a relatively short period, easysearch ceased to be his focus, although the website was not dismantled. It has never changed its logo from the 2007 sign based on the 2005 EF Sign.

### **Creation and reputation of easy+ brands**

84. As previously stated, it is admitted that the first easyJet mark had a reputation for airline services by November 2005, and that the easyHotel mark had a reputation for hotel services and providing hotel accommodation by September 2015. It is also admitted that the second easylife mark had a reputation for online retail services and retail services conducted by mail order by June 2022, the last date of assessment. The first easyJet mark

was filed on 5 April 1995 in respect of class 39 services; the easyHotel mark on 21 September 2000 in respect of class 42 services, and the first easylife mark on 22 September 2003 (for advertising and “bringing together for retail” services) and the second easylife mark on 14 September 2020 (for advertising and online and mail order retail services).

85. Apart from these concessions as to reputation, the Defendants put the Claimant to proof, for the purposes of s.10(3), that its brands had a reputation for any of the relevant services in this case on the relevant dates. So the Claimant is required to prove:
- i) for the 2005, 2007 and 2009 assessment dates, that the easyMoney mark, the first easylife mark, the easyGroup mark and/or the easyHotel mark had a reputation at those times with users of the specified services;
  - ii) for the 2015 date, that the easyMoney mark, the first easylife mark, the easyGroup mark, the second EASYJET mark and the Easy Networks mark had a reputation at that time, and (if material) that the easyHotel mark had a reputation for reservation services for hotel accommodation; and
  - iii) for the 2022 date, that the easyMoney mark, the first easylife mark, the second easyJet mark, the easyGroup mark and the Easy Networks mark had a reputation at that time, and that the easyHotel mark had a reputation for reservation services for hotel accommodation.

In addition, at all dates, the Claimant has to show (if material) that the first easyJet mark had a reputation for arranging transportation of passengers and travellers by land.

86. The evidence about the establishment and reputation of the easy+ brands was principally given by Mr Anderson and Mr Richardson. I set out below the material parts of the background to the brands and services that are the focus of this case. This is also relevant to the question of whether at the relevant times (2005, 2007, 2009, 2015, 2022) there was a recognisable family of easy+ brands, an issue that is relevant to confusion and whether easyfundraising would bring to mind any of the easy+ brands.
87. Mr Anderson explained that easyKiosk (onboard refreshments) and easyTech (aircraft maintenance) were established in 1995, ancillary to the easyJet business. He said that the easyJet inflight magazine was first called “easyCome, easyGo”, and then “easyRider”. Inflight retail services were provided first through a seat back catalogue, which also went by the name “easyKiosk”, and then from around 2000 to 2002 easyJet sold its own branded gifts through a third party, with an online catalogue at easyjetgifts.com. The inflight retail catalogue is and was from an early stage available to browse online, and easyJet passengers could pre-order goods for collection on board. In-flight retail was clearly carried on continuously and to a significant extent, both before and after the filing of the second easyJet mark in 2012. Ms Mullen said that receipts for in-flight purchases have carried the easyJet logo since 2008, and images of the in-flight shopping brochures bearing the name easyJet, or easyJet Boutique, dating from 2008 to 2020, were produced in evidence.
88. A brand called easyExtras was created in 1997 to sell extras such as car hire and hotel bookings to easyJet passengers. However, Mr Wait said that ground transportation services were also provided to easyJet passengers via the easyJet cars, holidays and

transfers website, using the easyJet name, from 2011 and continuing, and airport and taxi transfers since 2007. A Wayback Machine screenshot from 2004 appears to show a similar car hire service on the easyJet.com website. I infer that these services are likely to have been provided on a reasonably substantial scale, as they are sold through easyJet and the services are still being provided. Confidential financial information provided in native format was not explained and is difficult to interpret, but does confirm that car rental and transportation services were provided.

89. easyGroup (UK) Ltd was incorporated in late 1998 as an umbrella company, and it acquired the domain name easy.com in June 1999. The website published online details of the family of brands, which by 2000 also included easyRentacar.
90. The next substantial business that was created was easyInternetcafe, originally known as easyEverything. This was promoted through a website from May 1999, and the first store opened in Victoria in June 1999, with considerable publicity and excitement, partly generated by an advertising budget of £1 million. Mr Anderson said that it expanded at a phenomenal rate: the cafes were large, bright and cheap. Four more cafes opened in London that year. The business won a retail launch of the year award, with more publicity as a result. Many more cafes were opened (including Edinburgh, Glasgow and Manchester, and various European venues) and turnover reached £11 million in 2001, but the business rapidly declined (£3 million turnover in 2005) as home internet coverage and hand held devices took over the market.
91. Mr Anderson said that easyValue went live online in November 2000 as an early kind of price comparison website.
92. easyRentacar went live online in March 2000 and a first site opened near London Bridge on 20 April 2000. There was some media coverage and a substantial advertising spend. The business was as much European as national, but offices were opened in Glasgow, Manchester and Birmingham in 2000. In 2001, easyRentacar won awards for its car hire service and customer-facing technology. By September 2002, then known as easyCar, there were 26 sites. In 2004, the business model changed to becoming a brokerage service for other car rental companies, and it has been a successful business model ever since, with turnover varying between £15 million and £26 million p.a. It was held in easyJet Airline Co. Ltd v Dainty [2002] FSR 6, that there was protectable goodwill in easyJet, easyRentacar and easyEverything by 2000 for the purposes of a passing off action.
93. On 19 December 2000, Campaign Magazine published a list of the top ten most talked-about brands of the year, of which “easy” came in at number 3, after Napster and Palm Pilot. While I heard no particular evidence about Campaign Magazine or the author of the article, I can safely assume that, whatever the ranking, the accolade was likely accurately to reflect the prominence of the “easy” brands at that time.
94. easyMoney. From 2001 until 2006, there is evidence that an easyMoney credit card was promoted on the easymoney.com website. Consumers were encouraged to cut up their Barclaycards and apply online for a “DIY credit card”. There was initial coverage of the story on the BBC and in the Daily Express, commenting that the target was 75,000 customers in year one. Problems with the profitability of that business were discussed by Sir Stelios in an interview with the FT in February 2002. Accounts of easyMoney Creditcard Limited show that a profit was being made by 2004, but only on a turnover of £91,816. Website page shots from August 2005 show that by then the easyMoney credit

card was still being promoted. However, there was no data about use of the website or number of credit cards applied for. There was evidence that the easyMoney credit card was promoted in the easyJet in-flight magazine in 2004, which is therefore likely to have been seen by a significant number of those flying on easyJet at that time.

95. A new line of car insurance appeared on easyMoney in 2005, promoted as being “New from Stelios”. Mr Richardson described significant advertising for easyMoney services, including on the sides of London taxis, and the publicity that it got as a result.
96. There is evidence that by 2006 the easymoney.com website was offering financial advice and that it was operating in part as a comparison website for credit cards and unsecured and secured loans. By then it had sold its easyMoney credit card business to Lloyds TSB. But again, there is no evidence of the number of visits to the site or people who used the services. By 2009, there is evidence of a re-branding of the website, with a focus on price comparison for mortgages, energy bills, broadband phone and TV packages, credit cards and person loans; but again, no data. An online mortgage sourcing and comparison tool was being offered in September 2009, and three “top product mortgages”.
97. From 2011 to 2016, the home page of easyMoney.com is unchanging in appearance and main content, and seems to offer only a price comparison service for energy saver calculation, digital switch solutions, mortgages, current and savings accounts, credit cards and personal loans. The easyMoney mark was clearly being used, but there is no data for use of the website and it is not easy to assess whether it was known by a significant proportion of the public who used financial services or purchased car insurance, or other financial services purchasers. There are no accounts for these years to establish what level of commission was being paid to easyMoney for its referrals.
98. There is then no evidence (other than the home pages) in relation to any time until after September 2015. As at 4 February 2022, easyMoney had £80M under management on behalf of 2,563 investors for peer-to-peer lending (£47M) and ISAs (£33M); the invested funds were advertised in 2017 as being used to provide secured loans. But easyMoney only apparently had turnover of £2.76 million by 2021, which is low for a financial services business. In 2018, the homepage advertised investment accounts, ISAs, pensions and an easyMoney plus membership scheme, providing discounts if £1,000 or more was invested.
99. The services relied on for the easyMoney mark are “unsecured and secured personal loans, mortgages, ISAs and other investment funds, deposit accounts, and advice and consultancy relating to those services”. The Defendants’ case is that the mark was first used in relation to those services in 2018, so it could not have had a reputation prior to then for those services. However, it is clear that unsecured and secured lending and mortgages were offered to some extent from about 2006. It is likely that it had a reputation for these services by 2009.
100. easyHotel. I note (although the evidential findings and concession are not binding in this case) that in W3 Ltd v EasyGroup Ltd [2018] EWHC 7 (Ch); [2018] FSR 16 (“W3”), Arnold J found that easyGroup had not proved that easyHotel had a reputation prior to June 2009 (the date at which W3 Ltd conceded that it had a reputation for hotel services and hotel room bookings).



101. The easyHotel brand was only launched in 2004, initially as a third-party room booking service, and it opened its first hotel in Kensington, London, in August 2005 (34 rooms). Publicity described the service as “no frills” and focused on plans to open further hotels, in the Netherlands and Switzerland rather than in the UK.
102. Mr Richardson said that he designed the marketing content for easyHotel on its website, easyhotel.com, which when set up operated as a brokerage site and allowed customers to reserve hotel rooms in 20,000 third party hotels in 100 countries, from 2004 through to 2008. Some web pages from the Wayback Machine from these years were in evidence to support that. They describe a facility that allowed users to book hotel rooms at hotels other than easyHotels at low prices, and they referred to easyHotels that were opening or were already open.
103. There was, however, no evidence about the volume of use of the website, so it is difficult to assess how many people saw the information on the site. Nor was there evidence of whether hotel booking services for non-easyHotels were offered between February 2017 and February 2022. Mr Moffatt’s evidence is entirely ambiguous on this point, and the numerous screen shots from the Wayback Machine from 2013 to 2021 that the Claimant relied on do not demonstrate that bookings could be made for non-easyHotels; on the contrary, the drop down menu indicates a requirement to select an easyHotel location. The inference that I draw is that, while the website started out as a brokerage service, once easyHotel had established many of its own hotels the website could then be used only for booking those hotels. According to Mr Wait, it is easyJet holidays’ website that offers booking of third party hotels, through a partnership with Booking.com.
104. Mr Richardson said that he designed website content, internet, press and outdoor advertisements, leafletting and email shots to support the easyHotel business, and that the easyJet in-flight magazine was used to promote it. There was a flurry of publicity each time a new easyHotel was opened.
105. By November 2005, there had been some coverage of the launch of the first hotel, and the hotel booking service had been running for a year or more. These were the relatively early days of internet shopping and booking, so it cannot be assumed that mere presence on the internet would be as noticeable as it is today. There is no evidence to support a conclusion that easyHotel would be known by a significant proportion of the public concerned with using hotel or hotel booking services at that time.
106. Mr Moffatt gave evidence of easyHotel turnover from 2016, but not prior to that date. There were revenue figures pleaded by the Claimant for each year between 2004 and 2010, but no evidence to support them or any submissions made in that regard.
107. The second hotel in the UK opened in Victoria, London in April 2007 (105 rooms). By May 2007, there were two hotels in London and several abroad, but there was very little evidence of volume of use or press coverage by that date either. Mr Richardson referred to digital display banner advertisements that he prepared for easyHotel in 2007, but these promoted its Budapest hotel.
108. There is evidence of some easyHotel publicity between December 2007 and November 2008 in the Liverpool Echo, Sunday Express and Scotland on Sunday newspapers (4 articles). By September 2009, there were three further hotels at Heathrow Airport, Luton

and Paddington (a further 197 rooms in aggregate). Mr Moffatt accepted that the operation was “very small”.

109. By September 2009, easyHotel had five hotels in the UK and was targeting airport passengers. The UK hotels were still confined to the London/London airports area but there is evidence of greater press coverage. Even by this date there is no evidence of press coverage of the online booking services.
110. easy.com. Mr Anderson said that this domain was established in 2000 and used for an electronic mail service for members of the public to obtain a free @easy.com e-mail address. He said that it operated from 2000 to 2020, when the email service was taken in-house for private use by easyGroup. Log-in was available from the easy.com home page. There was however no evidence about the extent of its use.
111. Mr Richardson said that when he transferred to easyGroup in 2002, the website was just a webmail platform, but that he designed a new version of the easy.com website in 2002 to act as the portal for the various easyGroup businesses, to provide linkage between them. All easy+ businesses were required to link back to easy.com from their home pages from that time.
112. Mr Richardson said that easyGroup supported the easy+ brands, using easy.com, and that easyGroup became what it now is, rather than an umbrella company for the different businesses, in 2008, when Sir Stelios’s business model changed to franchising and licensing. The creation of new business ideas was left to the franchisees and licensees thereafter. easyGroup grants brand licences to easyJet, easyMoney, Easy Networks, easyCleaning and easylife. It makes its revenue from licence fees and royalties. easyGroup’s turnover has ranged from £8 million in 2012 to £12 million in 2020, then falling back to £6 million in 2021, before recovering to £23 million in 2023.
113. Easy Networks’ affiliation to easyGroup was secured in about 2019. Mr Gwilliam explained that it was set up in 1995 and that the business was named following a suggestion from his accountant to use the word “easy” together with “Networks” or “Group” because he could see that Mr Gwilliam was “making a very complicated area easy for my customers”. Mr Gwilliam said that “easy” was descriptive and was a common brand name. Easy Networks Ltd and Easy Group Ltd were incorporated in that year, and used the domain easy.co.uk. Other domain names using the word “easy” were also acquired by Easy Networks. Mr Gwilliam said that he assumed that there were many other “easy” businesses in operation that had nothing to do with easyGroup.
114. The business developed – it mainly operated as business to business services, in internet access and ISP services, and was not supplied to individuals to any significant degree. Revenue topped £1 million in 2005 and £3 million in 2010. The trade mark was registered by Mr Gwilliam in 2016. He agreed that Easy Networks’ customers would have deliberated carefully before choosing to use its services. Easyfundraising was not a competitor, he said: it was “completely different”.
115. Mr Gwilliam explained that in 2019 all Easy Networks’ IP rights comprising or incorporating “easy” were assigned to easyGroup as part of a settlement of a claim brought by easyGroup in 2017. Easy Networks and Mr Gwilliam’s Defence to that claim stated that: Easy Networks did not use the easy+ brand style; they relied on business to business services; there was no likelihood of confusion with easyGroup or its licensees;

and that the average consumer would not make a link with easyGroup. Until 2019, the trade mark was two separate words, in capital letters, one larger with magenta background colouring. Mr Gwilliam said that by June 2022 easyNetworks had been using the new easyGroup branding, and that by then its customers would recognise the new branding. He confirmed that the filed Defence was truthful and that he still believed it to be correct.

116. Evidence about Easylife's business was given by Mr Oakenfold, who was employed by that company from 2018 to 2023, and by Mr Wise, who had been employed between 2000 and 2014, and then again from 2018 and continuing. Mr Wise said that Easylife had always used DRMG for customer interactions until 2016. DRMG first, and then Easylife itself, sent emails to customers in connection with their orders. The emails sent in around 2013 used the "tickball variant" of the easylife mark (see at [160] below) and the strapline "easylife lifestyle solutions".
117. Mr Wise said that the strapline evolved from "easylife lifestyle solutions" to "easylife everyday solutions" after 2013, but that both straplines continued to be used in emails. He said that emails using the easylife tickball variant sign and the strapline "everyday solutions" in the header and "lifestyle solutions" in the footer would have been sent to hundreds of thousands of customers from about 2016 to 2021. This was from the time that Easylife took its customer communications in house, and before it changed its customer relationship management system in 2021. From September 2015 to December 2022, he said that Easylife had sent out over 500 million marketing emails, in addition to customer purchase emails.
118. Mr Wise said that on all the Easylife catalogues and on its website home page, customers would have seen the tickball variant, which was part of the logo. The branding changed in 2024 to adopt the easy+ guidelines, but a tickball is still used as part of the branding of easyLife.
119. Mr Oakenfold said that he concentrated initially on improving communications with customers, including 3 different types of email contact. As from December 2017, DRMG was engaged to send out marketing emails for Easylife, but this stopped from the end of 2019 and was brought back "in house". The emails sent by DRMG used "easylife everyday solutions" and "easylife lifestyle solutions". He said that multiple iterations of the easylife branding were in use in the period 2018-2023. Easylife used affiliate marketing, through Affiliate Performance Marketing ("APM"), to make contact with affiliate networks (such as AWIN) and manage marketing on its behalf.

### **Family of marks**

120. Mr Anderson said that from a very early stage Sir Stelios intended the easy+ businesses to be a collection of different brands. They were "cross-sold" through easyGroup and on the easy.com website in due course. The businesses' websites worked alongside more traditional advertising and marketing methods. He said that there were articles written in the press between about 2000 and 2010 referring to the "easy brand", or easyGroup brand, or "empire".

121. All these brands had in common the word “easy” and the use of Cooper Black font and white on orange colour scheme. Mr Richardson described how he designed advertisements for some of the brands for inclusion in the easyJet in-flight magazine. He said that the visual identity provided by the branding was central to his job: the recognisable easy+ get up was an essential part of the business of all licensees. People would potentially not make the connection unless there was visual consistency, he said. The orange 021C pantone was a great distinguishing feature, and licensees were required to comply with the brand licensing guide, without variants, though black and white versions of the white/orange branding were used, as required. This evidence is material on the issues of confusion under s.10(2) and link and reputation under s.10(3) of the 1994 Act.
122. The family of marks relied upon for the purposes of this action is easyJet, easyHotel, easy.com, easyGroup and easyMoney. The Defendants accept that easyJet had a substantial market presence, but contend that the other four marks had a very small presence indeed. In view of the evidence rehearsed above, it is clear enough that easyHotel and easyMoney each had some market presence from 2005 and 2001 respectively, albeit a relatively small presence on the basis of the evidence before me, and that easyGroup was not a consumer-facing brand but principally a licensee management company. However, the name easyGroup (in Cooper Black font) was visible to an extent on the easy.com website from 2001 to 2014 – as the group company, not as a provider of services – and it then tended to be replaced by reference to the easy family of brands thereafter. easy.com had a market presence from 2002 as the portal for all easy+ brands, though it is unclear whether it had any significant presence as an internet services provider.
123. The existence of a family of marks has been consistently accepted by this court in other litigation brought by or against the Claimant: W3 Ltd v EasyGroup Ltd [2018] FSR 16 (as at 2009); EasyGroup Ltd v Easyway SBH [2021] EWHC 2007 (IPEC) (as at 2013); EasyGroup Ltd v Nuclei Ltd [2022] ETMR 31 (as at 2000 and 2007). It was conceded by the defendants in EasyGroup Ltd v Easy Live (Services) Ltd [2023] ETMR 12 as at 2010, 2016 and 2019.
124. As from November 2005, I find that there was already an identifiable family of brands, which were designated by the white on orange marking using Cooper Black font. easyJet, easyMoney and easyHotel were all identifiable at that time, even though the market presence of the second and third was limited, and easy.com was recognisable as the portal for all the easy+ brands. The distinctiveness of these brands was enhanced further by other brands that are not directly relied on, such as easyInternetcafe and easyCar. I doubt that easyGroup was recognised or really visible at all, despite being named (in easy+ brand livery) on the easy.com website. The family of brands enhanced the distinctiveness of the marks but only when they were used in accordance with the easy+ branding guidelines, not as plain word marks.

## **Revocation**

125. The Defendants counterclaim revocation, wholly or in part, of four of the Claimant’s trade marks: the first easylife mark (wholly); the easy.com mark (wholly), the easyHotel

mark (for “reservation services for hotel accommodation”) and the second easyJet mark (for “retail services” other than a subcategory of “inflight retail services”).

126. The Claimant complained in closing submissions that there was no pleaded case of revocation of the second EASYJET mark in part as the Defendants had counterclaimed for revocation of the mark for all services relied on. As the Defendants’ skeleton argument put it: having reviewed the evidence, they now accept that the second easyJet mark had been put to genuine use for inflight retail services. It was not initially suggested by the Claimant that it was prejudiced in terms of evidence that it would otherwise have adduced by the change of position, only that the abandonment should have costs consequences. But in closing submissions, Mr Edenborough said that if the different case had been pleaded by the Defendants, the “focus of the evidence provided by the Claimant in relation to the second easyJet mark would have been different and would have concentrated on a wider range of uses, rather than just on rebutting a general case of non-use”. No specifics of what other uses could have been evidenced was provided.
127. However, the reality is that this is an issue that the Claimant, represented by Mr Edenborough, has fought before, in a trial before Bacon J that took place three months before the trial before me. Judgment in that case, EasyGroup Ltd v Beauty Perfectionists Ltd [2024] EWHC 1441 (Ch) (“*Beauty Perfectionists*”), was handed down the day before this trial started. In that case, it was a corresponding EU trade mark that was relied on because the proceedings had been started in 2020, but exactly the same issue arose in exactly the same way, with the defendant resiling from their pleaded case for total revocation in the light of easyGroup’s evidence. The same witness, Ms Mullen, whose evidence is relied upon in this case, gave evidence and was cross-examined in that case. Had she been able to give evidence of retail services provided other than to easyJet passengers, to meet the partial revocation case, one would have expected that to have been elicited by Mr Edenborough in that case. The Judge recorded that easyGroup did not seek to contend that the mark had been used for the disputed services in any context other than in-flight retail.
128. I do not therefore accept that the Claimant was prejudiced in meeting the partial revocation case, even though it gives rise to different legal principles, and accordingly the Defendants should be permitted to pursue it.
129. Section 46 of the 1994 Act provides 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 purposes 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).

.....

(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.”

It is subsections (1)(b), (2) and (5) that apply in this case, with the relevant period of five years being that from 4 February 2017 to 3 February 2022.

130. In his judgment in EasyGroup Ltd v Nuclei Ltd [2023] EWCA Civ 1247; [2024] FSR 9 (“*Nuclei*”), Arnold LJ set out the essential principles that apply in a revocation case, with reference to various CJEU decisions, the citations of which I can omit:

“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: .....

(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 .....

(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 .....

(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 underway, particularly in the form of advertising campaigns... Internal use by the proprietor does not suffice ...Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter ...But use by a non-profit making association can constitute genuine use ...

(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.....

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark .....

(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

.....

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use .....

107. The trade mark proprietor bears the burden of proving genuine use of its trade mark: see section 100 of the 1994 Act and *Ferrari* at [73]-[83]. 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 .....

131. As Arnold LJ observed, that summary does not cover the principles applicable where use of a sub-category of goods or services is concerned, as is claimed to be the case here in relation to the second easyJet mark. In that regard, the applicable principles under s.46(5) of the 1994 Act were set out by Kitchin LJ in Merck KGaA v Merck, Sharp & Dohme [2017] EWCA Civ 1834; [2018] ETMR 10 ("*Merck*") 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 subcategories.

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 from the viewpoint 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."

132. The Claimant admits that the first easylife mark was not used during the relevant period in its registered form, but relies on use of acceptable variant forms of the mark, pursuant to s.46(2) of the 1994 Act. In this regard, the law was explained by Arnold J in Walton v Verweij Fashion [2018] EWHC 1608 (Ch); [2018] ETMR 34:

"119. ... The CJEU stated in *Specsavers International Healthcare Ltd v Asda Stores Ltd* (C-252/12) [EU:C:2013:497], [2013] E.T.M.R. 46 ("*Specsavers (CJEU)*") at [29] that the objective of what is now art.18(1)(a) of the Regulation was:

'by avoiding imposing a requirement for strict conformity between the form used in trade and the form in which the trademark was registered, ... to allow the proprietor of the mark, in the commercial exploitation of the sign, to make variations in the sign, which, without altering its distinctive

character, enable it to be better adapted to the marketing and promotion requirements of the goods or services concerned.’

120. In *BUD and BUDWEISER BUDBRAU Trade Marks* [2002] EWCA Civ 1534; [2003] R.P.C. 25 Lord Walker of Gestingthorpe (with whom Pill LJ agreed) held that the correct approach to s.46(2) of the 1994 Act, which corresponds to art.15(2)(a) of the Regulation, was as follows:

“43. ... The first part of the necessary inquiry is, what are the points of difference between the mark as used and the mark as registered? Once those differences have been identified, the second part of the inquiry is, do they alter the distinctive character of the mark as registered?

44. The distinctive character of a trade mark (what makes it in some degree striking and memorable) is not likely to be analysed by the average consumer, but is nevertheless capable of analysis....

45. Because distinctive character is seldom analysed by the average consumer but is capable of analysis, I do not think that the issue of ‘whose eyes? – registrar or ordinary consumer?’ is a direct conflict. It is for the registrar, through the hearing officer’s specialised experience and judgement, to analyse the ‘visual, aural and conceptual’ qualities of a mark and make a ‘global appreciation’ of its likely impact on the average consumer, who:

‘normally perceives a mark as a whole and does not proceed to analyse its various details.’

.....

121. As this indicates, and as the recent decision of CJEU in *European Union Intellectual Property Office v Cactus SA* (C-501/15) [EU:C:2017:750], [2018] E.T.M.R. 4 at [68]-[71] confirms, the normal approach to the assessment and comparison of distinctive character applies in this context.

122. As the case law of the General Court makes clear, alteration or omission of elements which are not distinctive is not capable of altering the distinctive character of a trade mark: see *Sony Computer Entertainment Europe limited the office for harmonisation in the internal market (trade Marks and designs)* (T-690/14) [EU:T:2015:950] at [45]. Furthermore, when a trade mark is composed of word elements and figurative elements, the former are, as a rule, more distinctive than the latter: see Sony at [49]. Accordingly, it is possible in an appropriate case for use of the word element on its own to constitute use of the trade mark: see Sony at [51].

133. The normal approach to the assessment and comparison of distinctive character, to which Lord Walker referred, is to consider the matter through the eyes of the average consumer of the goods or services in question, by reference to the overall impression created by the mark, bearing in mind its distinctive and dominant components, which may be visual, aural or conceptual (see further at [196] below).



134. The Claimant also relied on the case of ACTC GmbH v EUIPO (C-714/18) [EU:C:2020:573]; [2020] ETMR 52, for the following proposition as regards partial revocation for non-use:

“With regard to the relevant criterion or criteria to apply for the purposes of identifying a coherent subcategory of goods or services capable of being viewed independently, the court has held, in essence, that the criterion of the purpose and intended use of the goods or services at issue is an essential criterion for defining an independent subcategory of goods ....”

135. I now turn to the parties’ cases in relation to each of the four marks.

(1) easyHotel mark

136. The Defendants claim that one category of services for which the mark is registered, “reservation services for hotel accommodation”, has not been the subject of any use of the registered mark in the relevant period. I have found the relevant facts: during that period, the mark was only used in connection with reservation of accommodation in easyHotel’s own hotels, not in third party owned hotels.
137. The Defendants argue that, on a proper construction of the specification of the mark, given that facilitating reservations in one’s own hotels is part and parcel of providing hotel services and providing hotel accommodation (which are the other specified services), the third part of the specification, “reservation services for hotel accommodation” must mean reservations in third party hotels, otherwise it adds nothing to the other two parts of the specification.
138. Mr Edenborough disputed, as a matter of principle, that each separate description of services in the specification should be interpreted to be mutually exclusive in this way. He said that the use of semi-colons in the specification indicated that these were different aspects of a greater whole, which could overlap, and that intended use of the mark in connection with each different description of services is entitled to be protected, such that there was no restrictive interpretation of the different categories in the way that Ms Himsworth said was appropriate.
139. I prefer Mr Edenborough’s approach. I am unaware of any reason why each description should be treated as mutually exclusive, and no authority to that effect was cited. Ms Himsworth’s approach would be capable of having a significant impact on the protection afforded by the mark, when considering whether a rival sign was being used in connection with identical goods or services. There is no reason in my judgment to interpret the specification in that way. Accordingly, even though during the relevant period easyHotel has only used the mark in connection with providing reservation services for bookings in its own hotels, that use was a genuine use of the mark for reservation services for hotel accommodation.

140. I therefore reject the counterclaim for partial revocation of the easyHotel mark.

(2) Second easyJet mark

141. The Defendants claim that the use that has been made of this mark is only for a distinct sub-category of retail services of identified goods, namely in-flight retail services, not

retail elsewhere or by other means. The facts are that all the goods in question are sold by easyJet to passengers who are flying on its planes, not in other outlets – though the goods wished to be purchased by passengers can be pre-ordered (by paying for them online) before they fly. There was no evidence to establish that any of the goods that easyJet sells can be collected by someone who is not an easyJet passenger on a plane, or delivered to them on land. In that sense, although the contract of sale and purchase does not have to be concluded on a plane or at an airport, the goods can only be delivered to an easyJet passenger in the air.

142. Mr Edenborough argued that, since the goods can be ordered online in advance of the day of travel, albeit they are delivered to the passenger in-flight, it would be inappropriate to say that the retail services were only provided in-flight, since the transaction takes place before the flight, and the goods purchased are assembled to be loaded onto the plane as purchased goods, not as goods for sale. Further, he submitted that to limit the description of services to “in-flight” would be artificial, like limiting a motor fuels retailer to retail from roadside forecourts.
143. I do not agree with that comparison. The retail services provided by easyJet can in principle be provided anywhere; the provision of motor fuels cannot. Both arguments of Mr Edenborough were rejected by Bacon J in *Beauty Perfectionists*. Her Ladyship identified that it was the relevant services provided that were in issue, not the goods; and considered that the purpose of providing goods for sale to passengers on board aircraft was sufficiently distinct from running a shop or a website for home delivery as to amount to a coherent subcategory of retail services of the identified goods.
144. I agree with her reasoning. The provision of retail services in supplying certain goods (essentially of a gifts character) to those travelling by aircraft, which the passengers receive onboard and disembark with at their destination, is essentially different from providing a retail store, a market stall, wholesale premises or a website for purchase. It is an ancillary service of convenience to a very limited market. I would add two points to her reasoning. First, while at one level retailing other people’s manufactured goods can be seen as a single descriptive category, in whatever exact way it is performed, in reality it is such a broad category of different types of services provided to different consumers that it ought to be susceptible to different subcategories, as long as these are not arbitrary. Second, that if the matter is looked at in terms of the final sentence of Kitchen LJ’s fourth proposition (“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”), it is self-evidently fair to specify the services for which the Claimant has used the mark throughout the 5 years as being solely in connection with flights on aircraft, as there has been no other kind of retail of those goods; and no consumer would be likely to consider that offering the same goods for sale in a bricks and mortar store, or on a home delivery website, was anything to do with easyJet or easyGroup, given their wholly distinct retail operations.
145. Mr Edenborough said that the extent of the market in this case (based on the UK trade mark) and the period of alleged non-use are different, and so the findings of Bacon J cannot be applied automatically to this case. I agree, in principle, but there was no different evidence relating to use of the mark within the UK, or at different times from the period in issue in *Beauty Perfectionists*, to enable a factual distinction to be made. There was use of the mark in connection with retail of the goods in question throughout the 5-year period, but only in-flight, in the extended sense that I have explained.

146. It is an additional consequence of the *Beauty Perfectionists* decision, or rather of the Order made in consequence of it on 13 June 2024, that the EU trade mark in question and the ‘cloned’ UK mark that was created on 1 January 2021 were revoked with effect from 10 January 2020, save in relation to a more limited specification:

“Retail services connected with the sale of jewelry [sic], watches, purses, wallets, pouches and handbags; Games; Inflight retail services connected with the sale of food and drink, preparations and substances for use in the care and appearance of the hair, lips, face, skin, nails and eyes, cosmetics, perfumes, fragrances, colognes an sentence, suncreening and tanning preparations, sunglasses”.

There was (for whatever reason) no challenge to the specification in that case as regards the words of the amended specification prior to the word “Inflight”, whereas in this claim there was. In any event, therefore, the decision that I have reached will have a slightly wider effect than that of Bacon J. The fair specification is class 35 “retail services *provided to airline passengers* connected with ..... [as per registered specification]”.

147. The counterclaim for revocation of the second easyJet mark therefore succeeds to that extent only.

(3) easy.com

148. The Defendants’ case is that there is no evidence of use of this mark of a sufficient quality to amount to genuine use of a trade mark.
149. Mr Anderson’s evidence, on which the Claimant relies, was that easyGroup offered free @easy.com email addresses from 2000 so that customers could see what other easy+ brands were available on the easy.com website. The question raised by the Defendants’ challenge is whether this use (as to which no evidence of quantity was given) was merely promotional, in connection with the sale of other services or goods, and not to exploit commercially the mark for the relevant goods and services, namely “electronic mail services”.
150. The website was just a webmail platform until 2002, but it was then a portal for the various easyGroup businesses. The commercial benefit of the exploitation of easy.com was therefore that of the other businesses, or easyGroup as the parent company (at that early time) and then licensor (in the relevant period). The email addresses were not provided to encourage consumers to buy more on easy.com or from easyGroup, to take out paying subscriptions, or with a view to charging for their use later, but only to use the website for the benefit of other businesses and, indirectly, easyGroup Ltd as their holding company. However, during the relevant period the businesses were not owned by the Claimant but by its licensees.
151. These are unusual facts. The fact that easyGroup gave away the email addresses for free does not of itself mean that there was no commercial exploitation. Had the intention been to develop the business of easy.com or easyGroup (e.g. by selling broadband packages) there could be no doubt that the use was genuine use for commercial purposes. However, there was no real commercial exploitation of the mark by easyGroup itself. Does it therefore make a difference that other businesses were intended to benefit?

152. In my judgment it does, as the mark needs to be used as such in connection with the promotion of electronic mail services. No company in the easy+ group at the time was selling electronic mail services or intending to do so. As Mr Anderson said, the email addresses were used to entice consumers to a portal on which the other businesses provided links to or advertised their different goods and services. This seems to me to be the distribution of promotional items to encourage the sale of other goods and services, within para 106(4) of *Nuclei*, and does not satisfy the requirements of para 106(5).
153. There was therefore no use of the requisite quality to amount to genuine use of the easy.com mark, and I allow the counterclaim to revoke this mark for non-use.



(4) First easylife mark

154. The first easylife mark, as registered, is a figurative mark:



155. The mark comprises the text, written in black type as a single word, all in lower case, with a strap line beneath that describes the nature of the goods sold, and a decorative element that can be seen either as a triangle, part of which is shaded to create a “tick” shape, or (in 3D) as a pyramid, two faces of which are more darkly shaded. The font used for the text is unremarkable save for the even tracking of the characters.
156. The distinctive character of the mark is, in my judgment, partly in the conjoined word “easylife” and partly in the design, with strap line and decorative elements added. The word “easylife” is weakly distinctive (as compared with, e.g., ‘easytravel’, which is not inherently distinctive) because the concept of an easy life, which is emphasised by the strap line, is recognisable as an idea that has some meaning. However, the word is not strongly distinctive. Such greater distinctiveness as the mark has is attributable to the design elements.
157. Mr Edenborough relied, in support of a case that the word “easylife” was the only distinctive part of the mark, on the fact that Mr Wise said that the company was and is known as “easylife”; but that is unsurprising, given that the tickball or any other figurative element would not be reproduced orally. As he accepted, aural characteristics were likely to be less material, given the use of the variants principally in catalogues and on websites. There was no evidence, for example, of radio advertising of the business.
158. Although it was not formally conceded by the Claimant, there was no evidence to support use of this mark by Easylife Ltd in its registered form at any time. Instead, the following variants were alleged to have been used at various times between 2004 and 2022 on catalogues, product labels, invoices, the Easylife website, and emails:



<b>B</b> <b>The Tickball</b> <b>Everyday Variant</b>	
<b>C</b> <b>The Tickball</b> <b>Lifestyle Variant</b>	
<b>D</b> <b>The Text Variant</b>	EASYLIFE
<b>E</b> <b>The Text Lifestyle</b> <b>Variant</b>	EASYLIFE LIFESTYLE SOLUTIONS

159. In the relevant period, 2017-2022, there is evidence of use of: the Tickball Variant, on catalogues; the Tickball Everyday Variant, on catalogues, the website, emails, labels and invoices, including invoices to DRMG; the Tickball Lifestyle Variant, on the website and invoices, including invoices to DRMG; and the Text Variant, on catalogues, the website, and invoices. Mr Edenborough confirmed in closing submissions that the Text Lifestyle Variant was no longer being relied on: there was no evidence of its use during the relevant period.
160. For the other four variant forms, there was evidence of some use in connection with advertising services (the Tickball Lifestyle and Tickball Everyday Variants) and much use in relation to the “bringing together” of a variety of goods for sale in catalogues and on a website (all four variants). Nevertheless, the Defendants sought to establish that there was insufficient evidence of visible use of the Tickball Lifestyle Variant in connection with bringing together for retail services (as opposed to individual goods), and that the Claimant had failed to show any commercial exploitation of the four variants in connection with advertising and promotion services – or, alternatively, that if there was any exploitation then it was of a very narrow extent, in connection with printed inserts in printed magazines, and so the specification should be cut down to advertising by way of inserts into catalogues.
161. I will return to those three issues after considering the question of whether the distinctiveness of the mark remains unchanged in the variant forms. That prior question requires consideration of the changes in the design of the variants and whether they alter the distinctive character of the mark.
162. In my judgment, each of the three tickball variants creates visually a different overall impression from the mark: the design has been significantly changed. The prominent elements of the new designs are the word, the more decorative font and the outsize tickball motif. The changes in (or omission of) the strap line (in all cases except the Tickball Lifestyle Variant), the omission of the triangle/pyramid, the marked change of font, and especially the inclusion of the tickball (in the three tickball variants) all contribute to a different impression. What is distinctive of all three of the tickball variants is the word “easylife” and the tickball; the change of font and the presence or absence of strap lines are somewhat less distinctive.

163. Surprisingly, in closing submissions Mr Edenborough said that the tickball element was “entirely forgettable”. That is plainly wrong, both in terms of visual appreciation and on the evidence. Mr Wise ultimately accepted that the tickball (which is still used post-2022 in the new, easy+ branding of easyLife) was an essential element of the branding and an important part of the varied mark, whose purpose was to distinguish the brand. The tickball is a strong and distinctive element of the variants on which it appears. Perhaps the idea of it came from the original design of the mark, but it would not be recognised as such by the average consumer. The ball is new, the tick is prominent, and the size and position (and impact) of the device are entirely different.
164. In my judgment, accordingly, the three tickball variants have, overall, a different distinctive character, given that the visual appreciation of them would be the most prevalent form. The difference derives from the visual and conceptual combination of the word “easyLife” and the strong tickball motif. They are distinctive in a different way from the registered mark.
165. As for the Text Variant, the differences are, principally, the omission of the strap line and the triangle/pyramid, and the stylised design of the mark. Are those elements non-distinctive aspects of the mark? If they are non-distinctive then their omission or variation cannot alter the distinctive character of the mark. The Claimant relied on the cases of Quatrotec Electronica, SL v EUIPO (T-792/22) [EU:T:2024:69] (“*Quatrotec*”) and Anheuser-Busch Inc v Budejovický Budvar Narodný podnik [2003] RPC 25 (“*Budvar*”), among others, as establishing, respectively, that the use of words alone, or words and a small element of design, can be a variant form that preserves a registered mark.
166. While the principle is not in doubt, its application is likely to depend on the circumstances of use of the variant, on how strongly or weakly distinctive the words are as part of the original device, and how distinctive are the elements that have been omitted or altered.
167. In *Quatrotec*, the General Court held that affixing the mark to invoices was genuine use of the mark. The invoices contained an image of the registered mark, in the top left hand corner of each invoice relied on, as well as the name of the owner of the mark, Woxter Technology Co Ltd. The term “Woxter” was applied to certain (but not all) items on the invoice. The trade mark was also affixed to the loudspeaker products sold under the name “Woxter” and on the front of the company’s catalogue and the packaging of the loudspeaker.
168. The Board of Appeal had taken into account that the full mark had been used on the invoices, albeit in different colours, in white in the catalogue, and as a word on some of the invoices, in order to simplify the identification of the products, and that the mark and the word had appeared on packaging and on a technical data sheet provided. The General Court identified that the purpose of the regulation in issue (the equivalent of s.46(2)) was to allow use of the mark in a way that is better adapted to the requirements of marketing and promotion, and said:
- “...where the form of the sign used in trade differs from the form in which it was registered only in minor aspects, such that the two signs may be regarded as broadly equivalent, the aforementioned provision provides that the obligation to use the registered trade mark may be met by adducing evidence of use of the sign which constitutes the form thereof used in trade.”

It then noted that the appellant accepted that the change of colour of the mark on the invoices and goods did not alter its distinctive character and continued:

Secondly, as indicated by the Board of Appeal, the use of the verbal element of the contested mark on invoices is a common practice intended solely to simplify its identification. As the TM is a figurative mark, it is not unusual, for the purpose of legibility, for it to be limited to its verbal element when used on invoices to designate goods. Consequently, this use does not alter its distinctive character. In any event, as noted in paragraph 68 above, all the invoices also contain a graphic representation of the contested mark, in a form which does not alter its distinctive character...”

169. The decision of the Court was therefore that the combined effect of use of the registered mark and variants on invoices and packaging amounted to genuine use of the mark. It is unclear whether, if the only use had been the use of the word variant on the invoices, the same result would have been reached. It does however recognise that, in principle, where for particular reasons a simplified word version of the mark is used, that can be taken into account in assessing whether overall there is genuine use of the mark.
170. In *Budvar*, the Court of Appeal concluded that the Judge had not been entitled to interfere with the hearing officer’s conclusion that the distinctive element of the sign was the words “BUDWEISER BUDBRAU”, regardless of the font and the underlining, even though they said that they regarded his conclusion as surprising. On this basis, the device used by the appellant, which had a quite different design but included the words “Budweiser – Budbrau – Bud” was genuine use within s.46(2). The decision therefore turned on a conclusion that the only distinctive part of the mark was the words.
171. I have found that it is not the words “easylife” alone that make the mark in this case distinctive. Accordingly, the loss or change of the other distinctive elements alters the distinctive character of the mark, and the Text Variant is not a variant form within s.46(2) either. There was no evidence from the Claimant that the variants in issue were used because they were more suited to inclusion on particular documents produced or used by the business, or that the first easylife mark could not be used. On the contrary, Mr Wise confirmed that the Tickball Variant was first used as early as 2001, and other variants followed in 2013, 2019 and 2022, and he and Mr Oakenfold said that different signs were used in this way (often at the same time) to see which, if any, was most effective, but otherwise without discriminating between them.
172. This is therefore not a case of minor variations to a registered mark in order to accommodate particular locations of branding and what they could sensibly accommodate.
173. It follows that I conclude that the first easylife mark should be revoked for non-use with effect from a date to be determined at a consequential hearing.
174. After sending my judgment to the parties in draft, I was provided by the Claimant with a copy of a judgment subsequently handed down by Mr Nicholas Caddick KC, sitting as a Deputy High Court Judge, in *EasyGroup Ltd v Easy Live (Services) Ltd* [2024] EWHC 2282 (Ch). In that case, there was a similar counterclaim by the defendant asserting that the first easylife mark should be revoked for non-use. Mr Caddick concluded that the

counterclaim failed, holding that the same variants that I have considered were variant forms of the registered mark, within s.46(2) of the 1994 Act.

175. I have naturally read carefully the Deputy Judge’s reasoning for his conclusion to see whether I am persuaded that I should follow his decision, despite my own evaluative conclusion that the differences in the variants altered the distinctive character of the mark as registered. I am not persuaded that the word “easylife” is the only distinctive element of the mark, or that the average consumer would detect the tick within the triangle motif in the registered mark and link it to the tickball motif. Even placing the forms side-by-side, which the average consumer does not have the ability to do, it is not an obvious connection. There was no evidence before me to support an argument that the aural characteristics of the mark and variants were of any real significance. For the reasons that I have given, I therefore decide that the distinctive character of the mark is varied by each of the variant forms.
176. Had I reached a different conclusion on revocation for non-use, it would have been necessary to decide the points raised by the Defendants, as described in [162] above, namely whether:
- i) there is evidence of the Tickball Lifestyle Variant being used at all in connection with “bringing together for retail” services;
  - ii) there is evidence of any commercial exploitation of the variants in connection with advertising and marketing services; and
  - iii) registration of the mark in connection with advertising and promotional services should be cut down to advertising or promotion by way of inserts in printed catalogues.
177. The evidence of use of the Tickball Lifestyle Variant (only) in the relevant period on the retail side of Easylife’s business to which the Claimant could point was three images from the easylife website, captured from 2017, 2018 and 2020. These show (just about legibly) the use of this variant on labels of individual products: a pen for removing scratches on car paintwork; a dust mite prevention spray, and a stone, patio and decking cleaning fluid. The variant is not used on the website itself, other than on a photograph of the goods in question. The Defendants say that is not use in connection with commercial exploitation of the service of “bringing together” but only in connection with exploiting individual goods.
178. There was in fact evidence of use of this variant in catalogues and on the website itself, not on images of product labels, up to and including 2014, but not thereafter.
179. It seems to me that the Defendants are right on this point. Photographs of 3 products with labels bearing the variant over the relevant period of 5 years cannot go to establish a brand of “bringing together” for retail associated with that variant. Proof of relevant use in the years up to and including 2014 cannot prove use in the period 2017-2022. The Claimant has failed in any event to discharge the burden of proving genuine use associated with commercial exploitation of this variant of the registered mark for “bringing together” services.



180. So far as the advertiser-facing side of Easylife's business is concerned, the question is whether the mark, in the form of any of the four variants, has been put to genuine use in the relevant period in relation to advertising and marketing services. There is evidence of (1) invoices from Easylife to DRMG, some of which contain the name Easylife Group Limited and others contain that name and the Tickball Lifestyle Variant, and (2) invoices from DRMG to agents acting for the advertisers, which contain a reference to the easylife catalogue as a description of the nature of the service that DRMG is providing to the agent, viz insertion of the promotional material of the principal into the easylife catalogue.
181. My findings are that DRMG first performed two roles as a sub-contractor for Easylife: storing and despatching the Easylife catalogues, and dealing with Easylife's customer relations on its behalf. For the latter purpose, it used templates with the Tickball or Tickball Lifestyle Solutions Variants printed on them. The latter role ceased in October 2016, when Easylife took its customer relationships back in-house. In early 2018, DRMG started to send out marketing emails on behalf of Easylife, and this continued until late 2019, when Easylife took over. These marketing emails included the Tickball Everyday Variant and the Tickball Lifestyle Variant of the registered mark.
182. Later, from about 2005, DRMG performed a further role of paying Easylife for the right to insert third party hard copy advertisements into the Easylife catalogues, and DRMG sold this advertising space in the catalogues to its advertising clients or their agents. Thus, DRMG billed its clients or their agents for including their advertisements, and Easylife billed DRMG for the right to insert third party material. The invoices from Easylife during and before the relevant period contain the name of the Easylife company and the Tickball Lifestyle Variant logo.
183. The use of the word easylife by DRMG in invoices to advertisers' agents is clearly not use of the Text Variant by Easylife to brand the services that it is providing. DRMG was not acting in this respect as Easylife's agent during the relevant period, but as publisher of the inserts in the easylife catalogues, for which it bought the rights from Easylife. DRMG was in charge of the inserts, though Easylife was told who was advertising and had the right to object to particular advertisers.
184. The use of the word "easylife" by DRMG in its invoices is therefore not to indicate the origin of any services provided by Easylife, but rather is use by DRMG as a description of the services provided by DRMG to the advertiser. There is no evidence that Easylife sent any advertiser or their agent an invoice, and Mr Chrysostomou confirmed that that did not happen. The only invoices from Easylife were to DRMG on a monthly basis.
185. DRMG was therefore a customer of Easylife, in connection with advertising, and Easylife was a customer of DRMG in terms of catalogue production and distribution and (from time to time, including part of the relevant period) customer relations and management.
186. The use of the Tickball Lifestyle Variant on Easylife's invoices to its advertising client, DRMG, was therefore genuine use in relation to advertising services, albeit directed at an established market.
187. The Defendants say nevertheless that what Easylife was exploiting by use of the variant form was only a small sub-set of the huge range of advertising and promotion services,

and did not go beyond permitting the insertion of promotional material in its published catalogues.

188. Applying the guidance in *Merck*, the goods and services in relation to which the mark was used during the relevant period were, so far as advertising and promotion services were concerned, the provision of advertising by placing inserts in Easylife's published catalogues. The specification of "advertising services; promotion services" specified in the registered mark is very broad indeed: as Mr Aikens on behalf of the Defendants submitted, "it covers everything from a creative ad agency to providing advertising space in an in-flight magazine, to developing a media buying strategy for a multinational company, to Google running the Google sponsored online advertising market. The same can be said for promotion services." Mr Aikens went on persuasively to explain why banner advertising on a website is an entirely different sub-category, with different qualities and consequences, from DRMG's clients' physical inserts in the Easylife catalogue, but did not dissent from my suggestion that any kind of advertisement placed within a physical publication, whether inserted or printed on a page, may not, in its essentials, be different from the limited form of insert advertising carried on by Easylife.
189. The average consumer of advertising services of this kind is, in my view, likely to regard a physical, non-electronic advertisement of this kind differently from any more structured or web-based form of advertising. So, for that reason, there is an identifiable sub-category of advertising and promotional services concerned with advertising placed or inserted into printed publications. To confine the sub-category to inserts in catalogues would in my view unfairly limit the ability of Easylife to extend its range to cognate activities, though web-based advertising (which Easylife at no stage conducted, either before or during the relevant period) would be a different sub-category.
190. Accordingly, in agreement with the Defendants' analysis, I consider that a fair specification of the first easylife mark as regards advertising and promotion services would have been "providing advertising or promotional space in printed publications".

**s.10(2) Infringement – the EF Sign, the easysearch sign and the plain words**

191. The Claimant alleges that the first easyJet mark, the easyHotel mark, the easyGroup mark, the easy.com mark and the first easylife mark were infringed as at November 2005 by EFL's use of the EF Sign and as at May 2007 by EFL's use of the easysearch sign, and by use of the plain word Signs. In view of my decisions on the revocation counterclaim, the claims based on the easy.com and the first easylife marks fall away.
192. Section 10(2) of the 1994 Act provides:
- "A person infringes a registered mark if he uses in the course of a trade a sign where because –
- (a) the sign is identical with the trade mark and is used in relation to goods and services similar to those for which the trade mark is registered, or
- (b) the sign is similar to the trade mark and is used in relation to goods or services identical with or similar to those for which the trade mark is registered,
- there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the trade mark."

It is para (b) that is relevant in this case.

193. The requirements to establish s.10(2) infringement are set out in Match Group LLC v Muzmatch Ltd [2023] EWCA Civ 454; [2023] Bus LR 1097 (“*Muzmatch*”) at [26]:

“(i) there must be use of a sign by a third party within the relevant territory; (ii) the use must be in the course of trade; (iii) it must be without the consent of the proprietor of the trade mark; (iv) it must be of a sign which is at least similar to the trade mark; (v) it must be in relation to goods or services which are at least similar to those for which the trade mark is registered; and (vi) it must give rise to a likelihood of confusion on the part of the public.”

194. The issues in this case are principally those numbered (v) and (vi), it being conceded in particular that the Signs are at least similar to the Claimant's marks, at a low level, by reason of the presence of the word “easy”, but not otherwise. The Claimant contends for a greater degree of similarity, particularly in relation to the 2022 EF Sign.
195. The Claimant contends that the services provided by EFL are identical with those for which each of these surviving three marks is registered, on the basis that EFL would be perceived by the average consumer as being a partner of the advertising retailer who provides the goods or services, or as having some responsibility for them; or, in the case of the easyGroup mark, on the basis that EFL's services are in fact identical with the services that easyGroup provides, save for administration and grant of licences and support of licensees.
196. The principles emerging from many EU decisions on likelihood of confusion and on objections to registration have been consolidated and adopted in the UK, albeit in terms referable to the trade mark registration context. They were set out by Arnold LJ in both the *Nuclei* and the *Muzmatch* cases as follows:

“(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.”

197. These same principles are applicable in an infringement claim, although it is necessary in this context to consider the actual use of the sign complained of in the context in which it has been used: see Specsavers International Healthcare Ltd v Asda Stores Ltd [2012] EWCA Civ 24; [2012] F.S.R. 19 (“*Specsavers*”) at [45], [87], per Kitchen LJ.
198. Absence of evidence of actual confusion is not necessarily fatal to a claim under s.10(2), but the longer the use complained of has gone on in parallel with use of the mark without any such evidence emerging, the more significant that absence is likely to be. In assessing the significance of that matter, it is relevant to consider what opportunity there has been for confusion to appear and what opportunity for any such confusion to have been detected: *Nuclei* at [77].
199. Honest concurrent use of the sign complained of is not a defence as such to a claim for trade mark infringement under s.10(2), but it may be relied upon as a factor in the infringement analysis: *Muzmatch* at [115], [116]. It may exceptionally lead to a conclusion of no infringement, despite a small level of actual confusion: *ibid* at [119]; otherwise, the burden is on the defendant to establish that, by reason of the honest concurrent use, there is no adverse effect on any of the functions of the trade mark: *Nuclei* at [78], *Muzmatch* at [116].
200. The Claimant relies on the decisions in *W3* and *Nuclei* to support its argument on the identical nature of the services. In *W3*, it was accepted that the trade marks “easyStay” and “EasyRoommate” were used in relation to provision of shared residential accommodation because W3 operated through another company that provided that type of accommodation, even though easyStay and easyRoommate did not themselves provide the accommodation. It was not disputed that the average consumer would perceive W3 as providing the services in question. The identical nature of the services was conceded in relation to all the marks except EASYOFFICE, and in relation to that mark the Court accepted W3’s argument that the provision of office accommodation was inherently different, and in a different market, from shared residential accommodation.
201. In *Nuclei*, the matter related to a brokerage of serviced office accommodation, trading as EASYOFFICES, and trade marks owned by easyGroup Ltd in the form of the words EASYOFFICE with a specification that included “hire of temporary office space”. Even

though Nuclei Ltd did not hire office space, but only advised about space that was available for hire from others, it was held that many consumers would perceive Nuclei Ltd as having some responsibility for the quality of the service provided by the hire companies, even though consumers would have perceived that the hire company was mainly responsible. Arnold LJ said at [71]:

“The point is conveniently illustrated by the home page of Nuclei's website as at 25 March 2015 (a screenshot of which Mr Abrahams incorporated into his witness statement). Underneath the 2015 easyoffices logo (see paragraph 15 above) there is a heading: ‘FAST, FREE & EASY We search over 1700 offices in the UK to find you the best deals available.’ Underneath this is a search box with the legend: ‘from affordable start up offices to iconic landmark buildings, we have them all.’ To the left is the statement: ‘FREE EXPERT ADVICE Our impartial industry experts are ready to help you find your perfect office.’ To the right is the statement: ‘DEALS TAILORED TO YOU Ask about our rent free options, no deposits and all inclusive packages’. Underneath the search box and these statements is the heading ‘A WORD FROM OUR HAPPY CUSTOMERS’ followed by testimonials from three identified customers under the sub-headings ‘perfectly suited my needs...’, ‘Found the perfect office for us...’ and ‘providing an excellent liaison’. Similar messages are conveyed by earlier and later versions of the home page which are in evidence.”

202. The decisions in *W3* and *Nuclei* do not establish any proposition of law on this issue beyond the principle that a business will be taken to be providing a particular service using a sign if the average consumer would be left with the impression that that business shared the responsibility for the quality of the service, even though it was provided principally by another business. *W3* and *Nuclei* are otherwise decisions on their own particular facts. The relevant question for me to decide is, accordingly, whether the statements on the easyfundraising website were such that the average consumer who used the platform to purchase goods or services from a retailer would regard easyfundraising as having some degree of responsibility for those goods or services (it not being suggested that the retailers were providing the services on behalf of EFL). The Claimant does not rely in this regard on any other promotional material of EFL.
203. Having set out the legal principles, I can consider first the degree of similarity of the EF Sign, the easysearch Sign and the plain word Signs on the one side and the 3 remaining relevant marks on the other, and then consider whether EFL was providing the identical or similar services to those specified in the marks. The final question will be whether the degree of similarity is such that there was a likelihood of confusion in November 2005.

(a) Similarity of marks and signs

204. The first easyJet mark is a word mark, which in use has preponderantly been in the easy+ brand livery of white letters on orange, in Cooper Black font. The average consumer would not recall the mark in visual terms as a plain text word mark, though aurally there is similarity between easyJet and easyfundraising. The level of similarity of the EF Sign and the easyJet mark is therefore relatively low, there being nothing similar other than the use of the word “easy”, and the fact that it is followed without a gap by another word that is more or less descriptive of what the business is about. The same conclusion applies in relation to the plain word mark.

205. Mr Edenborough argued that the word “easy” is the dominant component of each of the registered marks, essentially for reasons that were rejected by this Court in *W3* and in *Beauty Perfectionists*. I also reject the argument. The points that he relies on do not have the effect of making “easy” dominant. The combination of “easy” and “fundraising” (with a lower case ‘f’) is conceptually, visually and aurally different from easyJet. Although I have accepted that there was a family of easy+ marks as early as 2005, they were identifiable as a family only by reason of the distinctiveness of the colour scheme and particular font. As the first annexe to the witness statement of Mr Hansel showed, there was ample use of the adjective (or prefix) “easy” at that time by other businesses that had nothing to do with the easy+ brands, and by even more as a description of the service provided.
206. “Easy” is a common descriptive adjective in everyday use. easyJet, like easyHotel, is a compound description of what the business provides and aims to provide. The word “easy” was not (as at 2005) immediately redolent of a specific brand. The matter would be quite different, even at that time, if EFL used the distinctive colours and font that the easy+ brands used, but that is not the case. Without the distinctive orange colour scheme and font, there would be little if any visual connection to easyJet. There is nothing in the design or colour of the EF Sign that is similar to easyJet, easyHotel or easyGroup in the get up in which those marks have mostly been used, and the similarity of the plain word form is limited to “easy”. The EF Sign has been used by EFL in distinctive blue and black livery, not as a simple word mark form. This has no similarity to the easy+ trade dress and little similarity to the word mark as registered.
207. The comparison and differences that I have identified very largely apply equally to the easyHotel mark and the easyGroup mark too. The easyGroup mark is conceptually slightly different from easyJet and easyHotel, in that it does not allude to the nature of any particular business, as the other two and the EF Sign do. That is a further distinction that takes easyGroup further away from the EF Sign. easyGroup is registered in orange and white as well as grey and white Cooper Black font, and as a plain word, but there is no visual similarity, beyond the mere presence of the word “easy”, with the easyGroup stylised mark in either colour scheme.
208. In overall terms, therefore, I conclude that the EF Sign, the plain word Sign and the 3 marks would be perceived by the average consumer as having some degree of similarity, but not strongly so, and that the word “easy” would not be perceived as a dominant characteristic of the marks.
209. The same conclusion applies in relation to the easysearch Sign, which is in exactly the same livery as the EF Sign, and its plain word form. There is a conceptual difference between the sign, used on a search engine web site and in email footers, and the three marks, and no visual or aural similarity beyond the presence of the word “easy”, which is not dominant.

(b) Identical or similar services

210. The services in respect of which the first easyJet mark is registered are various aspects of transporting passengers by air and on the ground, holidays, travel agency and associated matters (class 39). The services in respect of which the easyHotel mark is registered are hotel services, providing hotel accommodation and reservation services for

hotel accommodation. EFL does not in fact provide any of these services: it provides a platform for fundraising by retail and a search engine that raises funds by online searches.

211. The Claimant is therefore restricted to a case, by analogy with the findings in *W3* and *Nuclei*, based on EFL presenting itself as a partner of the retailers who advertise on the platform and sell transport and holiday (etc.) and hotel services, or as having some responsibility for the delivery or the quality of the services that are sold by the retailer. (No case in this regard was made by the Claimant in relation to the services provided under the easysearch sign.)
212. The question is not: what services does EFL in reality provide to its supporters, but: would the average consumer perceive that EFL has some responsibility for the services purchased from the retailer? It is common ground that, for purposes concerned with use of easyfundraising's platform by a supporter, the average consumer is an ordinary member of the public.
213. I have made detailed findings (at [66]-[75] above) about the extent to which the easyfundraising platform gives an impression of partnership or that EFL shares responsibility for the goods and services provided. In short, there was no evidence of any such language or material on the platform that would give such an impression at the relevant dates, viz November 2005 for the EF Sign and May 2007 for the easysearch sign. The Claimant did not identify anything in the images of the website in the period 2005-2007 that alluded to EFL being a partner of its advertisers, or that gave an impression that EFL took some responsibility for what the supporter purchased through the platform.
214. Instead, the Claimant argued that the platform can be used to search for sellers of goods and services by product type. However, no search conducted on the platform could do more than enable a supporter to identify the retailers offering certain goods or services and then select one for the goods or services of their choice; the platform provides no details of any particular goods or services beyond broad categories, unless a banner advertisement by a retailer identified a special offer on particular goods (of which there was no evidence), and certainly there was no recommendation or suggestion in any year of particular goods or services being made by the platform.
215. Even if there had been the same evidence of the platform content in 2005 and 2007 as there was for 2023, given the nature of the use of the websites (by a supporter or intending supporter wishing to raise funds for a good cause through retail) and the overall journey of the consumer through the website, I have found that the average consumer using the easyfundraising platform would not perceive easyfundraising as being a partner of the very many retailers on its website in the sense that the Claimant contends for, or as having responsibility for the quality of the goods or services purchased. That is because:
  - i) it is quite unrealistic to suppose that EFL was a partner of hundreds of independent retailers, some of which were well-known, large brands;
  - ii) Mr Miller's acceptance that some web pages in 2023 say that easyfundraising has retail partners ("we partner with over 7,500 retailers") was not an acceptance that there was partnership in the sense of a shared responsibility for providing the goods or services;

- iii) the overall experience and content of the essential pages on the platform (disregarding for this purpose the detailed terms and conditions) creates clear distance between the retailer and easyfundraising;
- iv) the supporter uses the platform for a particular purpose from the outset (otherwise they would go straight to the retailer's website), so what it is that easyfundraising does is understood by the supporter.

The allusions to partnership and any association of easyfundraising with given retailers on some of the individual retailer pages would be read in that context, and they do not, in my judgment, affect the overall impression of the services that EFL is providing and the distance between them and the retailers' businesses.

216. As regards the easyGroup mark, the specified services are in relation to administration and management of licensing of goods and services, including brand licences; and general support, marketing, advertising, administration and management services to licensees. The Claimant says that EFL's services to its advertisers are identical with these because they amount to marketing and advertising services in respect of a range of goods and services. The Defendants admit that EFL has carried on advertising, promotion and marketing services but deny that it carried out any of the services specified in easyGroup's registered mark, which are concerned with licensing activities and providing various types of support to licensees. The marketing and advertising referred to in the specification are two of five different services provided to licensees of goods or services, on its correct interpretation.
217. EFL does not provide licensing services or support to licensees. It provides advertising and promotional services to retailer clients. The fact that such clients may pay for advertising space on the easyfundraising platform, or on easysearch, does not mean that the advertiser is a licensee of goods and services, within the meaning of the specification. None of the other things that EFL does as part of its business amount to licensing of goods or services, or providing support to such licensees. The services provided by EFL are therefore not identical with or similar to those specified in the easyGroup mark.

(c) Risk of confusion

218. As there is no identity or similarity of services provided by EFL and the services specified in the relevant marks, the Claimant's claim of infringement as at 2005 and 2007 must fail, despite there being some similarity of the Signs and each of the three marks. It is unnecessary, and in any event impossible, to consider in detail the issue of risk of confusion on the facts that I have found, given that there is no similarity of goods or services.
219. Were it the case that the content of the easyfundraising website would lead an average consumer to believe that EFL shared some responsibility for the goods or services provided by the retailers, then the case of the Claimant was that there was a substantial risk of indirect confusion, because the average consumer would consider that the services provided under the EF Sign or the plain word Sign, on the platform, were connected in some way with the easy+ brands, i.e. that easyfundraising is part of the easy+ family of brands. The existence of a family of brands, which I have found as at 2005 and subsequently, increases the chances of confusion of this kind.



220. However, there is no evidence of any confusion on the part of any supporter around the time 2005-2007 (or indeed subsequently), despite extensive searches for the documents that would have disclosed it, as part of the disclosure process in this claim.
221. Mr Edenborough emphasised the importance (which I accept) of considering whether evidence of confusion would be likely to emerge, and said that there was very little opportunity for it to do so, given that indirect confusion was relied upon and given the online nature of the business. I do not accept that it is likely that these businesses existed side-by-side for about 19 years with a risk of confusion without there being some evidence of complaints or comments that demonstrate that some supporters believed that easyfundraising was a member of the easy+ family of brands or connected with them. Such complaints or comments could have been raised directly with easyJet, easyHotel, easyGroup or easyfundraising, using the functions on the general pages of the platform and the easy+ retailer pages, or upon a consumer review website such as Trustpilot. The fact that the services or goods were purchased online makes no difference in this respect, as contact information and the means of engagement was provided on the platform itself.
222. Of course, if the consumer was satisfied with the goods or services, they would not complain, but they might post a review that said something about easyfundraising and the quality or ease of use of the easyGroup licensees. A complaint might suggest that easyfundraising had not reached the standards to be expected of one of Sir Stelios's companies, or something similar to that. Or a complaint might have been directed to easyGroup or on the easy.com website, as the supposed parent company or group website. Yet there is nothing that has been identified.
223. Given the limited similarity of the Signs to any of the easy+ marks, I consider it unlikely that any user (or would-be user) of easyfundraising or easysearch would be likely to be confused about whether it was an easy+ brand. By 2005 and 2007, all the easy+ brands and other easyGroup companies used the highly distinctive white on orange, Cooper Black insignia. The different nature of the easyfundraising business (particularly if it was in fact 'partnering' with other retailers) was quite dissimilar to any easy+ brand in or before 2005 or 2007, and this and the different get-up mostly used would militate strongly against confusion of the kind alleged. If, for some consumers, the presence of the word "easy" might bring to mind other "easy" brands, some of which would be easy+ brands and some would not (such as Easylife, Easy Cleaning and Easy Networks, as well as others identified by Mr Hansel in his evidence), that is insufficient to amount to a risk of confusion unless the consumer would go on to ask themselves whether this might be another easy+ brand, or be connected to easyGroup, and be unsure of the answer.
224. In my judgment, it is unlikely that any but a few (not a significant proportion) would make the association and be confused in that way. Users of EFL's advertising services would be least likely to be confused, as they were relatively sophisticated and careful business persons, or professionals, and as such are most unlikely to consider that easyfundraising or easysearch is an easy+ brand or connected in some way with easyGroup.
225. If the first easylife mark could have been relied on, in consequence of genuine use of a legitimate variant, there would be some high-level similarity of retail-connected services, for reasons given below in relation to the second easylife mark as at June 2022, but I would have found no risk of confusion for the same reasons given in [258] and [259] in relation to the second easylife mark. There would also be identity of advertising or

promotion services, but again no risk of confusion, for essentially the same reasons as are given in [260]-[262]. Although Easylife was not part of the family of easy+ brands at the time in question, or at any time before 2022, the average consumer of advertising or promotional service would have been well able to distinguish between easyfundraising or easysearch on the one hand and Easylife on the other. There is no evidence to the contrary.

226. Despite not formally conceding it, Mr Edenborough did not ultimately pursue any argument based on direct confusion between the EF Sign, the easysearch Sign or the plain word Signs and any of the three marks.
227. I therefore reject the allegations of infringement under s.10(2) as at November 2005 and May 2007 for all the reasons given above.

### **s.10(2) Infringement – the @easyuk handle**

228. This allegation involves the same 3 marks – the first easyJet mark, the easyHotel mark and the easyGroup mark – and the relevant date of assessment is September 2009. The Sign was used by EFL as part of its social media promotion of its fundraising through retail. The agreed summary of use was that the Sign has been used from September 2009 as EFL’s handle on Twitter to promote EFL’s services.
229. @easyuk differs from the EF Sign in that two of its three components are non-distinctive, leaving only the “easy” component as being at all distinctive. For the reasons previously given, the “easy” components of the marks are not strongly distinctive, but nevertheless there is a closer degree of similarity between this Sign and the marks than between the EF Sign and the marks.
230. For the reasons previously given, however, there is no identity or similarity between the services for which the marks are registered and the services provided by easyfundraising using the handle, which is the same as the services provided using the EF Sign. The Claimant’s case for infringement by use of this sign depends equally on its case that EFL was providing the same services as those in the easyJet, easyHotel and easyGroup specifications, which I have found not to be the case. My finding applies equally as at September 2009 because there was no change in the way that easyfundraising provided services, only a relative increase in its reach. Further, there was no evidence that in 2009 EFL was using the language of partnership or aligning itself with retailers in such language as to suggest that it took responsibility for the services provided by the retailer, for reasons that I have already given.
231. Were there identity or similarity of services, then again the average consumer would be unlikely to be confused by the use of the only common element, “easy”. The handle was only used in connection with the services provided by easyfundraising, which are distinct from the services specified in the three marks. Such evidence as there is (see under the 2015 EF Sign below and in the Schedule to this judgment) proves that users other than one careless user knew that @easyuk was the easyfundraising handle. Although by September 2009, easyHotel was more visible than it was in 2005 or 2007, having opened 3 more UK hotels, that is not sufficient in my view to make association with the easy+ brands much more likely or to cause confusion, if any association with an easy+ brand

was in fact triggered. That is because the handle was only used on Twitter in connection with easyfundraising's distinct business activities.

**S.10(2) Infringement – the 2015 EF Sign.**

232. The relevant date for this alleged infringement is September 2015, by when EFL had started to use the 2015 EF Sign, which partly supplanted use of the EF Sign, though the latter continued to be used as a footer on the website up to June 2020, despite the more prominent use of the 2015 EF Sign.
233. The marks alleged to be infringed by the use of the 2015 EF Sign in connection with the essentially unchanged easyfundraising business are those that I have considered above, in relation to the previous Signs, but in addition the following: the Easy Networks mark (though only from 11 January 2016) the specification of which was “internet access services; internet services provider (isp) services”; and the second easyJet mark, the specification of which was retail services in relation to various goods, but for which I have determined that the fair specification is retail services of that kind provided to airline passengers.

(a) Similarity of sign and marks

234. Although, as with the EF Sign, the 2015 EF Sign contains the name “easyfundraising”, it also contains, equally prominently, a strap line with the words “feel good shopping”. The word “easyfundraising” is, as before, a single composite word, all in lower case, but this time in a single colour, cyan; the strap line is a string of three separate words, all in lower case, in pink. The words are accompanied by a logo, in the shape of an “e”, the top half of which is a semi-circle in cyan and the bottom half of which is a double curved line in pink, representing a smile. The smile was no doubt intended to be seen as complementary to the words “feel good”.
235. The Easy Networks mark is a figurative mark composed of the two words, each in capitals, with “EASY” above “NETWORKS”, and the former more prominent because the letters are a larger size, placed on top, and in white against a bright magenta background, whereas the letters of the latter are smaller, below and in less distinctive light grey against white. What is distinctive about this mark is the word “EASY” combined with the magenta colour. On the 2015 EF Sign, however, and in the plain word Sign, the word “easy” in “easyfundraising” is not prominent.
236. In my judgment, there is less similarity between the 2015 EF Sign and the easyJet, easyHotel and easyGroup marks than there was between the EF Sign or the @easyuk handle and those marks. That is because the word “easy”, which is the only point of any similarity, is less prominent on the 2015 EF Sign, and because the 2015 EF Sign contains other text and a logo that are equally prominent. There is only very low similarity with the 3 easy+ marks.
237. As for the Easy Networks mark, that is distinctive on account of the design and the bright colour (in the same way that the easyHotel and easyGroup marks are much more distinctive in their white and orange livery). The distinctive design helps to make the word “EASY” more prominent, but that word it is not distinctive in itself, either with or

without the word “Networks”. There is therefore some aural similarity and limited visual similarity, and there is limited conceptual similarity: fundraising through shopping and internet networks are obviously different, though the word “easy” as a descriptive adjective is used in the same way for each, describing the simplicity of the (different) services provided.

238. Overall, there is low similarity between the Easy Networks mark and the 2015 EF Sign and the plain word Sign, despite the pink letters in the 2015 EF Sign being close in colour to the magenta background of the Easy Networks mark.

(b) Identical or similar services

239. Easyfundraising’s basic business model had not changed by 2015 and the findings that I have made about the services that it provided apply equally in September 2015 (and, if relevant, January 2016). As regards the second easyJet mark, EFL did not provide retail services to airline passengers, nor, for the same reasons that I have previously given, did it assume any kind of responsibility for any such services provided by its advertisers. There was no evidence of pages of the easyfundraising website alluding to some partnership between EFL and the retailers at that time, but even if there were pages similar to the 2023 pages that were in evidence, they do not, when assessed overall, amount to any indication of partnership or responsibility for the advertiser’s goods or services.
240. The services provided at that time by Easy Networks were almost wholly business-to-business internet services, though the specification of the mark is not limited in that way. The extent of EFL’s internet activities were its own website and internet promotional activity, such as on Twitter. There was no evidence that EFL itself provided internet access services or isp services to its supporters, only the ability to use EFL’s website to register as a supporter and use it to raise funds. Neither was there evidence that it advertised internet access service or isp service providers on its website.
241. The Claimant’s pleaded case in this respect is that the services are similar to Easy Networks’ services because the services provided to supporters are online and they are therefore complementary and the services provided to advertisers are online and therefore complementary. I have no hesitation in rejecting that argument: it cannot be said that the fundraising and advertising services provided by EFL are complementary to Easy Networks’ services simply because EFL offers those services on an online platform and website. There is no reason to suppose that a consumer would regard the services of one as likely to have been provided with the services of the other.
242. The services provided by EFL using the 2015 EF Sign and the plain word Signs and the services provided by easyJet, easyHotel, easyGroup and Easy Networks are therefore dissimilar.

(c) Risk of confusion

243. For the reasons previously given, the average consumer would be unlikely to be confused merely on account of use of the word “easy”, even if the services could be regarded as having some degree of similarity.

244. The Claimant sought to rely on eight individual instances of alleged actual confusion, over the period 2018-2022. I have analysed these in detail in the Schedule to this judgment. When carefully considered, none of them proves actual confusion (whether indirect or direct) by an average consumer of easyfundraising's services, for the reasons I give there.
245. Accordingly, even if there were any similarity of services, the Claimant has not proved confusion or a risk of confusion, nor is there a proper basis on which to deduce such a risk.

**s.10(2) Infringement – the 2022 EF Sign**

246. The relevant date for this alleged infringement is June 2022, when EFL started to use the 2022 EF Sign on emails and social media in place of the 2015 EF Sign. From 20 September 2022, the 2022 EF Sign was also used on the easyfundraising website.
247. The marks alleged to have been infringed by its use are the same as for the 2015 EF Sign and in addition the second easylife mark, which is a simple word mark, the specification of which includes “advertising and marketing services”, “retail services including on-line retailing” and “retail services conducted by mail order”.
248. The Defendants admit that the advertising and marketing services specified in the second easylife mark are identical to the services provided by EFL to advertisers under the 2022 EF Sign, but deny that any other services within the specification of the second easylife mark are identical or similar to its services.

(a) Similarity of marks and signs

249. The 2022 EF Sign reverts to a single blue-black colour for the indicium easyfundraising and drops the colours and strap line of the 2015 EF Sign and its smile logo. Instead there is a new logo in a yellow-gold colour, comprising the letter “e” and a decorative element around the letter representing a circle of gold coins. As with the previous signs, the only similarity is provided by the presence of the word “easy”, which is relatively more prominent than in the 2015 EF Sign, on the basis that the strap line containing 3 other words has been removed.
250. The Claimant contended that the Defendants had knowingly moved closer to the easy+ marks when designing the 2022 EF Sign, on the basis that the yellow-gold was closer to the easy+ orange and the word “easy” was more prominent. The Defendants denied this. Although Ms Heasley accepted that yellow-gold was closer to orange than pink is, and that removal of the strap line removed a point of distinction between the easy+ marks and the sign used by EFL, she said that the designer had been told to stay away from anything resembling easy+ brands, that EFL itself wanted to stay away from the colour of orange, and that at this time the litigation had started before the re-brand went live. I accept her evidence.
251. In my judgment, the yellow-gold logo in the 2022 EF Sign is dissimilar to the orange background in the easyGroup mark and as used by easyJet and easyHotel. The average consumer would not make any association with them on that basis.

252. There is some similarity of the 2022 EF Sign and the marks owing to use of the word “easy” and the use of it as a prefix to a word describing the nature of the business, but otherwise no visual, aural or conceptual similarity between the marks and the Sign. In overall terms, the degree of similarity is low. The position is the same in relation to the simple word Signs EASYFUNDRAISING and EASYSEARCH and the second easylife mark: the similarity is limited to the word “easy”, which is not strongly distinctive; “easylife” is conceptually distinct; and there is therefore only a low level of similarity in terms of global appreciation.

(b) Identical or similar services

253. As stated, the Defendants admit that the advertising and marketing services provided by EFL to its retailers are identical with part of the specification in the second easylife mark.
254. As for the services provided to supporters, I have already held that these are dissimilar services to those specified in the easyJet, easyHotel and easyGroup marks or the Easy Networks mark.
255. The Claimant’s evidence of use of “partnership” language and other suggestions of alignment between EFL and its advertisers was based on the screenshots from the easyfundraising website in 2023. The changes to the website, including use of the new 2022 EF Sign, went live in September 2022. It is therefore a reasonable inference that some of what is visible on pages in 2023 was probably not visible on the website before September 2022. Whether this included the examples of “partnership” and other alignment on which the Claimant relied was not proved. There was no evidence of its being visible before that date, including at the date of assessment, June 2022.
256. EFL was not substantively providing to its supporters any of the services that were specified in the Claimant’s marks. The principal question on similarity of those services is therefore the same question that I have addressed at earlier dates of assessment, namely whether the average consumer using the easyfundraising website (or the app, by that stage) would have the impression that EFL had some responsibility for the goods or services that they purchased from its advertiser retailers. The answer in my judgment is the same: the average consumer would not have that impression. This is a very different case from *Nuclei*, where Nuclei Ltd’s own website enabled consumers to identify specific products and obtain Nuclei Ltd’s advice on the suitability of space provided by third parties, and then tailoring a bespoke package to their needs; and different from *W3*, where there were direct connections between the company that provided shared residential accommodation and the website of W3 Ltd that advertised the space.
257. A secondary question arises in connection with the second easylife mark, as regards the on-line and mail order retail services that are part of its specification. EFL and easylife both provide services in connection with retail, namely a bringing together of products made or sold by other retailers; but there is also an important difference, namely that EFL provides a portal that a supporter can use to pass through (for a particular purpose) to buy products from other retailers. Easylife provides a website from which various products, including ones made by third parties, can be purchased directly from it. There is therefore some similarity but only at a fairly high level, in that both are providing services in connection with online retail.

(c) Risk of Confusion

258. I do not, however, consider that there is any risk of the average consumer confusing Easylife with easyfundraising, as the 2022 EF Sign, the plain word Sign and the second easylife mark only have limited similarity (the presence of the prefix “easy”), and there is only high level similarity in the retail services provided. Any user or intending user of the easyfundraising or easysearch site would be there for a specific reason, which is a service that only those sites provide. At the relevant date, Easylife advertised on easyfundraising’s platform, so it was evident on the platform that Easylife was something different.
259. As for indirect confusion, the presence of the word “easy” itself is not sufficient (in view of the substantial number of other users of that word) to lead an average consumer to think that easyfundraising or easysearch must be connected with Easylife, absent some additional common factor. The specific service that easyfundraising was providing, albeit in a retail context, was so different in substance from what Easylife offered that the average consumer would not have been likely to be confused about their origins or common ownership, though the retail context might have brought Easylife to mind. The difference from easysearch is also marked.
260. The issue of possible confusion in 2022 is therefore restricted to EFL’s provision of advertising and marketing services to its retailers or advertisers. The average consumer of the advertising and marketing services can be assumed to be sophisticated and careful. Indeed, in all but two cases, the services were provided to professional intermediaries acting on behalf of the retailers, the two exceptions being Amazon and eBay. There was no evidence about those who advertised on easysearch. The advertising clients would all have been aware of the nature of the business operation of EFL. They would likely have been aware of its having been carried on for a long time.
261. The risk of confusion alleged is the risk that the average consumer might be confused as to whether easyfundraising (or presumably easysearch, though little was said about it) was another easy+ brand, or connected to the brands. Given the nature of the average consumer in relation to these services, there was no real risk of that confusion. Indeed, the family of brands relied on by the Claimant in support of its argument (and which I accept existed) militates against any such confusion, because the family of brands use the very distinctive white and orange get up. This was a requirement of the easy+ brands guidance, which Mr Anderson said was to be adhered to without exceptions, save where, e.g. planning constraints prevented the use of orange on shop fronts, or the cleaning product containers only accommodated an orange band rather than being completely white and orange. Whatever an uninformed member of the public might have thought, there was no risk of a sophisticated professional (or Amazon or eBay) being confused as to whether this relatively longstanding business was one of the easy+ companies or associated with them.
262. Unsurprisingly, there was no evidence of any confusion by advertisers, despite easyfundraising having been in operation since 2005 and easysearch since 2007, and despite the very extensive searches. If any sophisticated user acting as an intermediary was mistaken about the ownership or control of EFL, it is more likely than not that that mistake would have come to light in time, either by the professional in question realising their mistake or as a result of the content of communications between the professional

and either EFL or easyGroup. The small size of the EFL operation in its early years, which was no longer the case by 2015, does not undermine that conclusion.

263. I therefore reject the claim of s.10(2) infringement as at June 2022, principally on the basis that the services provided would not have been perceived as identical or similar; but in relation to the second easylife mark, where the advertising and marketing services were identical, on the basis that there was no risk of confusion.

### **s.10(3) Infringement**

264. The Claimant alleges that the first easyJet mark, the easyHotel mark, the easyGroup mark, the easyMoney mark and the first easylife mark were infringed as at November 2005 by EFL's use of the EF Sign and as at May 2007 by EFL's use of the easysearch sign, and by the plain word Signs.

265. Section 10(3) and (3A) of the 1994 Act provide:

“(3) A person infringes a registered trade mark if he uses in the course of trade, in relation to goods or services, a sign which –

(a) is identical with or similar to the mark, ....

(b) ....

where the trade mark has a reputation in the United Kingdom and the use of the sign, being without due cause, takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the trade mark.

(3A) Subsection (3) applies irrespective of whether the goods and services in relation to which the sign is used are identical with, similar to or not similar to those for which the trade mark is registered.”

266. The requirements for establishing a case of infringement under s.10(3) (or article 9(2)(c) of the EUTM Regulation) were set out in *Muzmatch* at [55] by Arnold LJ:

“(i) the registered trade mark must have a reputation in the relevant territory; (ii) there must be use of a sign by a third party in the relevant territory; (iii) the use must be in the course of trade; (iv) it must be without the consent of the proprietor; (v) it must be of a sign which is identical with or similar to the trade mark; (vi) it must be in relation to goods or services; (vii) it must give rise to a link between the sign and the trade mark in the mind of the average consumer; (viii) it must give rise to one of three types of injury, that is to say, (a) detriment to the distinctive character of the trade mark, (b) detriment to the repute of the trade mark, or (c) unfair advantage being taken of the distinctive character or repute of the trade mark; and (ix) it must be without due cause.”

267. The points in issue in this claim are (i) in part, (v) in part, (vii) and (viii). I have already found that in each case there is at least low level similarity between the marks and signs that I addressed under s.10(2) Infringement, above, by reason of the presence of the word “easy”, and the same applies to the other mark relied on under s.10(3), namely easyMoney.



268. The law relating to reputation was set out by the CJEU in the case of General Motors Corp. v Yplon SA (C-375/97) [EU:C:1999:408]; [1999] ETMR 950 as follows:

“24. The public amongst which the earlier trademark must have acquired a reputation is that concerned by that trademark, that is to say, depending on the product or service marketed, either the public at large or a more specialised public, for example traders in a specific sector.

25. It cannot be inferred from either the letter or the spirit of Article 5.2 of the directive that the trademark must be known by a given percentage of the public so defined.

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

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

269. Establishing reputation, for these purposes, has been held to be a “not particularly onerous requirement”, and it is concerned with recognition by that part of the relevant public (using the type of goods or services for which the mark is registered), not the quality of the reputation.

270. As to the nature of the “link” required between the sign and the trademark, Arnold LJ explained at [56] in *Muzmatch* that:

“it is sufficient for the use of the sign to give rise to a link in the mind of the average consumer that the sign would call the registered trademark to mind even if the average consumer would not be likely to be confused as a result... this must, like the question whether there is a likelihood of confusion, be appreciated globally taking into account all factors relevant to the circumstances of the case.”

See also Sanity Group GmbH v EUIPO (T-541/22) [EU:T:2023:310] at [62].

271. A likelihood of confusion is not a requirement under s.10(3). The “calling to mind” of the average consumer is tantamount to the required link: Maier v Asos plc [2015] EWCA Civ 220; [2015] ETMR 26 (“*Maier*”), at [120], per Kitchin LJ.

272. Detriment to distinctive character is also known as “dilution”, “whittling away” and “blurring”, and it occurs when the link weakens the ability of the mark to identify the goods or services for which it is registered, e.g. if the mark, which the average consumer once immediately associated with the goods or services, is no longer capable of having that hold: Comic Enterprises Ltd v Twentieth Century Fox Film Corporation [2016] EWCA Civ 41; [2016] ETMR 22 (“*Comic Enterprises*”), at [113]-[118], per Kitchin LJ. Whether such dilution has occurred or is at risk of occurring depends on a global assessment of the mark and the use or future use of the sign, but it cannot simply be inferred from the mere presence of a similar sign in the market: *Maier*, at [127].

273. Detriment to the reputation of the mark is also known as “tarnishment” or “degradation”, and it occurs when the public perception of the goods or services for which the sign is used is such that the power of attraction of the mark is diminished. That is particularly so if the goods or services offered under the sign have a characteristic or quality that is liable to have a negative impact on the image of the mark: *Comic Enterprises* at [118].
274. In both categories of detriment, there must be at least a serious risk (if not actual evidence) of a change in the economic behaviour of the average consumer of the goods or services for which the mark is registered. The serious risk needs to be established by evidence or by deduction, based on a global appreciation of the impact, but it must be more than mere supposition: *Comic Enterprises* at [118]. The Claimant accepts that it cannot prove an actual change in economic behaviour, but it relies on deduction.
275. Taking unfair advantage of the distinctive character or repute of a trade mark is sometimes referred to as “parasitism”, “piggy-backing” or “riding on the coat tails”, and is concerned with the advantage taken by the user of the sign, not with any detriment to the owner of the mark. The advantage may be taken deliberately or unintentionally. The Claimant did not pursue its pleaded case that advantage of the Claimant’s marks had been deliberately taken by EFL. Both Mr Woodroffe and Ms Heasley denied it and they were not challenged on that point.
276. Advantage may nevertheless objectively be taken where the user of the sign benefits from the reputation of the mark, or from the marketing endeavours of its owner, without having to pay compensation or incur commensurate expense itself. Mere advantage is not sufficient to give rise to infringement, however. There must be something that makes the advantage unfair. Absent a case of deliberate riding on the coat tails of the Claimant’s marks, there must be some other factor that creates unfairness, such as where a new entrant to a market gets an unfair lift from association with well-known goods or services.
277. There was at one time doubt as to whether a change in the economic behaviour of the average consumer was required to be established, in order to succeed on the unfair advantage limb. The issue was addressed by Sir Anthony Mann in his judgment in EasyGroup Ltd v Easy Live (Services) Ltd [2022] EWHC 3327 (Ch); [2023] ETMR 12, at [187], [188]. That was a case in which the Judge found that the defendant’s director changed the sign under which it traded to “mimic” the easyGroup marks and try to obtain a benefit. The Judge held that a change in the economic behaviour of the average consumer likely to make use of the defendant’s services was required, and that it was to be inferred on the facts:

“187. There was a debate as to whether unfair advantage required a change in the economic behaviour of the average customer. Mr Edenborough submitted it did not; Mr Aikens submitted that it did. In Argos Ltd v Argos Systems Inc [2018] EWCA Civ 2211; [2019] Bus. L.R. 1728 Floyd LJ said:

‘107. So far as a requirement for a change in economic behaviour is concerned, the CJEU has held that proof that the use of the sign is or would be *detrimental* to the distinctive character of the trade mark requires evidence of a change in the economic behaviour of the average consumer of the goods or services for which the trade mark is registered or a serious likelihood that such change will occur in the future: see

Case (C-383/12) *Environmental Manufacturing LLP v OHIM* (judgment of 14 November 2013) (at [34]–[43]). It by no means follows that there is a requirement for evidence of a change in the economic behaviour of consumers of the trade mark proprietor's goods or services in order to establish the taking of unfair advantage of the distinctive character or repute of the trade mark. In my judgment, it should be sufficient to show a change in economic behaviour of customers for the defendants' goods or services in order to show that the use of the sign is taking unfair advantage. In *Jack Wills Ltd v House of Fraser (Stores) Ltd* [2014] EWHC 110 (Ch); [2014] F.S.R. 39, Arnold J proceeded on an assumption to that effect as a result of a concession by counsel (see paragraph 82) but I consider the concession to be correctly made. I do not think, however, that change of economic behaviour provides the answer to this case. The relevant economic behaviour must be that which occurs in response to ASI's use of the sign ARGOS in relation to the service of the provision of advertising space. Had the sign not been used, internet users would neither have arrived at the site nor clicked on the ads. Even if the arrival at the site is not a relevant change of economic behaviour, clicking on the ads must amount to such a change.'

I agree with Mr Aikens that this paragraph would seem to require such a change, or the serious likelihood of a change. The reference to the absence of a need to show such a change is in relation to the economic behaviour of the *proprietor's* customers. Floyd LJ seems to accept that some change in the economic behaviour of the *defendant's* customers is necessary. In the usual case it is not easy to see why use of a sign could be unfair unless it achieved something, and that something is likely to be a change in behaviour *or the likelihood of such a change*. Floyd LJ went on to say that such an event would not, without more, render a use of a sign unfair, but he nonetheless seems to have required it."

278. The issue did not arise for consideration on the appeal against Sir Anthony's decision. It is, perhaps, easier to see that such a change is required where the defendant already has a trading business and makes changes to its signs to take advantage. It is less obvious if the defendant is creating a new business, taking advantage of the claimant's trade marks, though some advantage will need to be proved.

### **s.10(3) Infringement – the EF Sign in 2005, the easysearch Sign in 2007 and the plain word Signs**

279. The claim for infringement of the Claimant's marks under s.10(3) by use of the EF Sign or the plain word Sign from November 2005 and by the easysearch sign or its plain word form from May 2007 relates to the first easyJet mark, easyHotel, easyGroup, and easyMoney (ignoring the first easylife mark, which I have held should be revoked).

(a) Reputation

280. The Claimant contends that each of these four marks had a reputation at those dates. The reputation of the first easyJet mark is conceded by the Defendants.
281. Based on my findings about the extent of use and knowledge of easyHotel by November 2005 and May 2007 (see at [102]-[111] above), I do not consider that the Claimant has proved that easyHotel had a reputation at either of those dates with a significant part of the general public. I bear in mind that the test is not a demanding one, but it does require that a significant proportion of the relevant public (users of hotels) would be aware of the brand. Given the small size of the Kensington hotel and the late opening of the Victoria hotel, the small number of individuals who had actually stayed at these hotels by the relevant dates does not amount to a significant part of the hotel-using public. Although there had been some intensive publicity relating to the opening of the Kensington hotel in August 2005, the development of the brand was quite slow. By November 2005 there was only one UK hotel, which had been open for 3 months. There was therefore protectable goodwill, as the Defendants have conceded, but a reputation among a significant part of the hotel-using public requires more. By May 2007, there were still only 2 UK hotels, both in London. I do not consider that the launch of 2 hotels with a relatively small number of rooms was sufficient to establish a reputation for easyHotels, or that its tentative steps towards opening overseas hotels achieved a reputation before 2009.
282. The specification for easyMoney's services that is relied upon is in relation to loans, mortgages, ISAs, investment funds and deposit accounts. Although the easyMoney website had been active since 2001, it was in 2005 limited to the proprietary credit card, though by 2006 this had been supplanted by car insurance, financial advice and price comparison services for credit cards and secured and unsecured loans. The significant promotion of easyMoney in easyJet's aircraft was limited before November 2005 to the credit card. There were further easyMoney products that had been launched by May 2007, including some within the specification, and the business was succeeding (i.e. making a profit). On that basis, I am able to accept that easyMoney probably had a reputation for loans and mortgages by May 2007, but not for the remaining services until 2011.
283. I do not accept that easyGroup had a reputation for the administration and management of licensing (as specified in the easyGroup mark) prior to 2009, as it was essentially first a holding company, whose name would not have been known to the public who used licensing administration services; then, from 2002, it was a name that appeared on the easy.com website (less prominently than "easy.com") but which had no other significance for or traction with the average consumer of the relevant services, or at least none has been proved. If seen, the indicium "easyGroup" would have been assumed to be a group or holding company associated with the easy+ brands, or possibly the owner of the easy.com website.
284. From 2007 or 2008, easyGroup became a licensing company but not one providing services to the general category of users of administrative and management services, as it only provided services to its own licensee companies. There was no evidence that easyGroup managed advertising on behalf of its brands. That position had not changed by 2009.

(b) Link between Signs and trade mark

285. The average consumer in question for these purposes is the consumer of the services provided by easyfundraising in 2005 and easysearch in 2007, that is the general public in relation to the use of the fundraising platform and search website, and commercial retailers or their professional agents buying advertising space on either. The position in this regard is the same for all the following dates of assessment.
286. The particularly relevant factors in considering in this case whether the general public using or considering using the easyfundraising platform or easysearch website would make such a link are:
- i) the low degree of similarity of the EF Sign, the easysearch Sign, the plain word forms of the Signs and the marks with a reputation (first easyJet mark and easyMoney mark);
  - ii) the extent of the reputation of the marks;
  - iii) the image or knowledge that the average consumer would have of those marks, whether aural or visual, and how distinctive the marks had become;
  - iv) the appreciation that the consumer would have of the Signs, whether visual or aural;
  - v) the particular purpose of the use or possible use of the easyfundraising platform or easysearch site by the consumer, namely to use it to raise funds for good causes while shopping with other retailers or doing internet searches;
  - vi) the absence of any similarity between the services provided by easyfundraising and easysearch and the easy+ brands, though bearing in mind that the consumer will be intending to buy goods and services on the platform; and
  - vii) the absence of any proved confusion or risk of confusion (and in this regard my findings about absence of confusion with easyJet will apply equally if not more so to easyMoney), bearing in mind that there can be a link made without a likelihood of confusion.
287. The existence of a family of brands is relevant to this assessment. Although the Claimant does not rely on easyInternetcafe or easyRentacar as being part of the family of brands, their existence, and the visibility of easyGroup in distinctive get up on the easy.com website, would have heightened the perception from 2005 that there was a family of easy+ brands, as I have found to be the case (see at paras 119-123). Importantly, however, the family of brands was identifiable as such (and distinguishable from other companies using the word “easy” as part of their names, or in strap lines) by the use of the Cooper Black font and the white and orange colours.
288. I have explained that there is a low similarity between the relevant Signs and the easyJet mark, and the same applies to easyMoney, for the same reasons. Whereas easyMoney only struggled over the reputation line in May 2007, easyJet in contrast was already very well known, as an important operator in UK and European aviation, particularly associated with holiday destinations. It would have been well known in 2005 and 2007 as a business, particularly in the context of airlines, flights and holidays. In my judgment,

the average consumer would immediately recognise the name easyJet, when it was heard, and would have an image of white and orange aircraft and the distinctive logo in their mind. The insignia and coloured version of the mark had already become very distinctive, by use.

289. However, the question is not how recognisable easyJet was, but whether, when faced with the name or sign easyfundraising when using or considering using the platform, the EF Sign or easysearch Sign (both in dark blue and black), or the plain word forms or the words when heard would create a link in the mind of the user to easyJet. In that regard, it is in my view crucial that the context of the consumer's use or intended use of easyfundraising and easysearch is wholly different, and that what easyfundraising and easysearch are seen as providing is quite different from what easyJet or easyMoney provided. The difference is explicitly in the name. Given the operation through the platform and use of email promotion, it is the visual appreciation of the Signs that is likely to have predominated, and it would ultimately have displaced any supporter's merely aural perception of similarity.
290. True it is that some users might be using the platform with a view to buying a flight or holiday (though before March 2010 they would not have found any easyJet services on the platform), or searching for ideas, and so in those cases it might be that they already had easyJet or similar airlines in mind – however, that would not satisfy the requirement that the sign creates the link. The clear image that the consumer would have of easyJet is the white and orange coloured image that I have described, quite different from the presentation of the Signs in issue. There would be no confusion, and the Signs would not cause the consumer to make a link with easyJet or easyMoney.
291. In the final analysis, I consider that the question comes down to this: was easyJet so famous, at the relevant times, that any business using the prefix “easy” as part of its name would bring to mind the more famous business, regardless of all other differences? Given the large number of other businesses using the word “easy” (which were identified in the annexes to Mr Hansel's witness statement, many of which dated back to 2005) and the entirely different context of use of easyfundraising and easysearch, I do not consider that there would be a link formed with easyJet (or indeed easyMoney, which was much less well known) in 2005 or 2007 in the way that is required. Everything other than the presence of the prefix “easy” is so different, and “easy” is just a descriptive word that many businesses used as part of their names, or as a strap line describing their services or goods. As held by Bacon J in *Beauty Perfectionists* at [162]-[164], use of the colour orange on a sign is capable of making a difference in this respect, as it tends immediately to call to mind the orange logo of another easy+ company; but there is no such factor present in this case, and in my view nothing sufficient to make the link.
292. The particularly relevant factors in considering whether the commercial or professional users of advertising services provided by easyfundraising or easysearch would make a link with easyJet or easyMoney are similar to those set out above, save that the purpose of the user's interaction with EFL would be entirely different and focused on the publication by easyfundraising or easysearch of their or their client's advertisement. Commercial or professional users of this type would be likely to be more aware of the range of businesses using the term “easy”, and of the business that they were actually dealing with, and therefore less likely to make a link save in relation to any easy+ brand that sells advertising space.

293. Accordingly, I find that the relevant average consumers would not have made a link between the EF Sign or the easysearch sign (or their plain word forms) and the Claimant's trade marks in 2005 or 2007.

(c) Damage or taking unfair advantage

294. Had there been a sufficient link, I would have found that the association caused no damage to the distinctiveness or repute of the relevant marks, and that there was no unfair advantage of them taken by EFL by using the EF Sign or the easysearch sign.

295. My reasons for the conclusion on unfair advantage are, briefly, the following.

296. First, there is no evidence that EFL obtained any unfair advantage in the establishment of its business as a result of its use of the word "easy". Mr Woodroffe explained how the business was conceived and how it grew, organically, as a result of his hard work, making contacts with local sports groups (initially) and then with larger "Partner" organisations, to attract supporters. It is not credible that he got an advantage, least of all an unfair one, from the use of the word "easy", other than to communicate the ease of the process by which supporters could provide benefits to good causes while doing their ordinary shopping.

297. Second, the Claimant's case (which abandoned allegations of deliberate riding on coat tails) depends on there having been, objectively, some advantage that was unfair in the circumstances. However, the Claimant does not specify its case in that regard beyond the assertion that EFL gained a commercial advantage by having formed a link with the easy+ brands, namely greater market awareness without having to pay for it, and the ability to trade on the trust that people place in the easy+ brands. There is no evidence to support the assertion, however, and Mr Woodroffe explained how the business was developed, which was nothing to do with supporters making a link with the easy+ brands. What Mr Woodroffe was offering was something quite distinct. Given the nature of the business, it is wholly improbable that any supporter joined the platform or used the search engine because they trusted a company that brought to mind the easy+ brands. EFL was not a financial services company: the supporters paid EFL nothing. They used it to provide a 'free' benefit to a chosen charity or good cause.

298. Third, given the large number of companies that have traded over the years using the word "easy", the Claimant cannot assert that there was an "insidious transfer of image" here. The Claimant does not have and could not have obtained a trade mark for the word "easy", only for "easyJet", "easyMoney" and the like. Those marks do not give it an effective monopoly over "easy", which would be the effect of the Claimant's closing submissions (as set out here) contending that EFL obtained an unfair advantage because they did not pay for a licence to use their name:

"Such advantage is unfair, because Easyfundraising has taken something for which others pay. Due to the nature of the business of easyGroup as a licensor of brands, this is an example of where the nature of the advantage and unfairness of it is readily appreciated. Association with the 'easy' family must bring in customers, otherwise the very many licensees in the family would not pay for the right to be associated with the 'easy' family."

That may accurately describe the Claimant's motive in bringing this claim and others like it, but it does not accurately reflect any unfair advantage obtained by EFL by starting up its business using the name "easyfundraising", which was merely descriptive of what it offered.

299. Fourth, and in any event, the unfair advantage that the Claimant alleges merely assumes what it seeks to prove, namely that EFL did not have the right to describe its products as easyfundraising or easysearch without the Claimant's agreement.
300. My reasons for the conclusion on damage to repute and distinctive character are the following.
301. First, there is simply no persuasive evidence of any damage caused or likely to be caused. If it was likely to be caused, it would have been caused by now, given the huge expansion in EFL's business since 2015. However, none is identified by the Claimant, despite the fact that EFL and easyJet have co-existed for 19 years, with easyJet advertising on easyfundraising's platform for 12 of those years. There was no evidence of the Claimant having to take counteractive measures to prevent dilution of its brands. There was no evidence of, or any likelihood of, a change in the economic behaviour of the average consumers of the Claimant's licensees' goods or services, nor is it easy to see how that can be deduced from the facts in this case.
302. Second, what is distinctive about the easy+ brands is not the word "easy" but the compound names, which are well-chosen and conceptually memorable, or have become distinctive by long use, or both, but in particular by reason of the highly distinctive Cooper Black font and white and orange livery. The EF Sign and its plain word form does nothing to harm the distinctiveness of the marks or the brands, even if easy+ brands are so well-known that "easy-everything" would call them to mind. That much may be inferred from the fact that, for 10 years, the Claimant had knowledge of the facts that it now alleges amount to use that damages the distinctiveness of the marks, but it did nothing to try to prevent such damage. Draft particulars of claim were sent to EFL in February 2012, but no claim was issued until February 2022, despite EFL's denials and refusal to desist. Further, this claim was eventually issued before EFL started to use the 2022 EF Sign, so it was not that change specifically that provoked the litigation. No witness was called by the Claimant to explain this.
303. The case on damage to repute was based on various allegations raised against EFL to the general effect that it was disreputable. This had three principal limbs:
- i) easyfundraising could be seen to have a poor reputation by reason of the number of complaints recorded against it, either in communications to it or reviews posted on Trustpilot;
  - ii) easyfundraising has wrongly used a .org.uk domain, which is indicative of a charity, or has described itself as a charity, and has therefore misled supporters about the nature of its profit-making business;
  - iii) easyfundraising does not adequately check the good causes that it allows supporters to register on its platform.

Nothing specific was advanced by the Claimant in relation to easysearch.



304. None of these allegations was made out on the evidence adduced. Again, the fact that the Claimant did nothing for 10 years after becoming aware of the facts speaks for itself – particularly in view of the fact that the Claimant called no witness to provide any other explanation of its delay.
305. I was not persuaded by the Claimant’s focus on individual complaints made to EFL directly, or reviews posted on Trustpilot, that easyfundraising had or has a poor reputation, or that there were a large number of legitimate complaints made to or about it. The process of fishing out a small number of emails from a very large pool of communications from supporters, or a few dozen reviews on consumer websites out of thousands, and relying on them as evidence of poor reputation is in my view flawed. There needs to be some qualitative and quantitative analysis of a larger sample of reviews, assessing the volume and nature of complaints against the likely number of users of the easyfundraising platform, and weighing them against positive reviews or communications.
306. It would be astonishing in the case of almost any business, however well regarded, if the type of exercise that the Claimant has conducted did not produce a small number of complaints. All substantial businesses make mistakes, have lapses in service, or unintentionally offend customers or members of the public on occasions; some members of the public like to publicise their dissatisfaction and some do so regularly. To suggest, as the Claimant did, that these relatively few instances out of thousands of communications justify a conclusion of poor reputation is quite hopeless. To take one example, the fact that a number of complaints were made about delay in payment of the commission to the charity or good cause selected by the supporter evidenced only a lack of understanding of the considerable delays, explained by Ms Heasley, in many retailers paying the commission to easyfundraising, and the fact that payments are then made to the good causes on a quarterly basis and subject to a (modest £15) minimum aggregate amount (with any balance less than £15 being rolled over to the next quarter). These facts do not justify the very few complaints that the Claimant has found that suggest that the business is a “scam”, nor does the fact that EFL retains any interest that accrues in holding accounts.
307. My point about the misleading nature of the exercise done by the Claimant is made in part by considering the overall rating of easyfundraising on TrustPilot, which though a simple averaging of consumers’ overall ratings of the business does at least take account of all the reviews posted. The overall rating in January 2024 was 4.4, and of the 4,110 reviews 92% were rated 4\* or 5\*, which put it into the good/excellent category. In comparison, easyJet’s overall rating in January 2024 was 1.4, with 77% of reviewers out of 11,888 rating it 1\* and only 16% 4\* or 5\*. I do not rely on that to suggest that easyJet does not have a reputation or that its reputation could not be damaged – both of which would be fallacious – but only to emphasise the point that easyfundraising on a simple overall assessment appears to have a good reputation now. I am also conscious that these reviews were not done in 2005 or 2007 and so do not necessarily reflect accurately the views of the average consumer at those dates. However, most of the complaints relied on by the Claimant covered the period 2015 to 2023, with the significant majority being in later years.
308. The large number of well-known retailers that advertise with easyfundraising and have done so for many years, including well-known and reputable high street brands such as Marks & Spencer and John Lewis, demonstrate that retailers do not share the Claimant’s

view that easyfundraising has a poor reputation. Indeed, many of the easyGroup licensees, including easyJet itself, advertised on easyfundraising between 2010 and 2022, generating about £1.25 million of sales. Whether the advertising was placed by affiliate networks or agents and whether it was to the knowledge of senior personnel at the licensees is really immaterial: what the facts demonstrate is that easyfundraising was not a platform that reputable brands (such as easy+ brands) did not use to advertise those brands. Mr Miller further explained that EFL has started to produce bespoke apps for important charities, including Macmillan, Save the Children and Dementia UK, and that such charities would not publicly have associated themselves with easyfundraising in that way without doing considerable due diligence and assuring themselves that they could not suffer reputationally from the association. That struck me as inherently likely to be true.

309. As for misuse of charity status, the evidence of Ms Heasley and Mr Anderson established that the org.uk domain is not reserved for charities and not for profit organisations, though lots of those do use org.uk domains. That evidence was supported by other documentary evidence. EFL is not charitable or not for profit: it donates to charities or registered good causes on average just over one half of the commission that it receives from retailers. EFL has not advertised itself as a charity but as “a charitable fundraiser” or “charity fundraising site”. Ms Heasley accepted that some of its supporters wrongly believe that it is a charity, and that describing itself as “the UK’s biggest charity shopping site” or “charity fundraising site” might mislead. On receipt of a letter from the Charity Commission dated 11 April 2024 seeking clarification about issues relating to charitable funds and use of the word “charity” in promotional materials, EFL offered to stop using messages of that kind if the Charity Commission felt that they were misleading. Notably, the Charity Commission’s letter was prompted by a complaint made to it by the Claimant, in the course of this litigation, not by a member of the public or a retailer.
310. I do not consider that there is anything culpable in what EFL has done. It is certainly not a matter of criticism that EFL has investors who aim to make a profit, as long as EFL was not describing itself (which it was not) as a not for profit organisation. It was not suggested to Ms Heasley or Mr Miller that EFL had intended to mislead, nor did the Claimant call any evidence to that effect. The Claimant has therefore failed to prove the “culpable” behaviour that it alleged in its pleaded case. The true position is that since 2005, EFL has raised and donated over £50 million to charities and good causes, about 30% of which was paid to registered charities. It is therefore fair for EFL to describe itself a fundraiser for charities.
311. Calling itself a “charity shopping site” or “charity fundraising site” was capable of being misunderstood and some supporters or partners appear to have misunderstood. But apart from a small number of reviews on consumer websites, which say that easyfundraising is not as charitable as it suggests, no significant publicity has been given to what was unintentionally misleading. The articles published, to which the Claimant draws attention, only repeat the descriptions that EFL has used; they do not challenge the truth of them. I do not consider that these matters have damaged easyfundraising’s reputation, let alone the repute of easyGroup’s trade marks.
312. The final element of culpable behaviour alleged by the Claimant is failure by EFL to check carefully the good causes that supporters seek to register. Ms Heasley’s witness statement said that EFL does check carefully to see that non-charitable good causes are genuine good causes. The Claimant decided to put that to the test, before starting the

litigation and in response to Ms Heasley's evidence. Two supposed good causes were registered: "Bridge ladies club – Greenwich" in 2018, and "Fulham Tennis Club" in 2023. An email seeking proof of the Greenwich good cause was sent by EFL on 20 July 2018, but not adequately followed up. Funds were raised in principle for that cause, by reason of purchases made through the platform, but no payment was released by easyfundraising to those purporting to act as the officers of that club. No challenge was made by easyfundraising to the Fulham good cause and funds were raised, but again no payment has been made.

313. It is clear from this that on one occasion at least EFL failed to carry out the checks that it should have made, and on another its processes were not sufficiently rigorous. Ms Heasley accepted the errors. The Claimant contends that a careless approach by EFL results in a risk of exploitation of the platform by consumers wishing to get a rebate on their regular shopping. There were a small number of Trustpilot reviews that questioned whether people could do this, which by implication raises a doubt about the assertion of fundraising for good causes. However, the number was tiny, and it is clear that EFL do check the good causes, but have on two occasions slipped up.
314. I am unable to see what relevance two proven errors in 6 years that gave rise to no publicity, and a tiny number of questions raised about the nature of good causes that can be registered, have to the repute of the Claimant's marks. Absent publicity of a real problem of fake good causes, there can be no impact on the repute of the marks. Mr Edenborough suggested that people will eventually become aware that the platform is just a discount opportunity for shoppers. In view of the evidence that I have heard, I consider that there is no real risk of that problem arising. The suggestion that it will is merely speculation. Even if some of the good causes may be of a more personal kind than charities, e.g. to fund caring needs of a relative, or university costs for an underprivileged child, there is no suggestion that these predominate; nor is it alleged by the Claimant that such good causes, if genuine, are damaging in themselves. No instance was provided of a supporter having created a fake good cause with a view to obtaining discounted shopping. It can be inferred that the Defendants' disclosure did not identify any such case – or alternatively that the Claimant did not press for the documentary evidence that it needed to prove its case in this regard. Either way, no such finding is justified.
315. It is clear to me that if there had been a real concern about damage to the repute of the easy+ brands or the distinctiveness of the marks, the Claimant would have brought this claim in 2012, and not waited for 10 years to do so. During that time, several of the most prominent easy+ brands were advertising on easyfundraising's platform, and some of these for a very long time - in particular easyJet, which advertised from 2011 to 2022, that is to say, from the time of the first letter of complaint until after the issue of this claim.
316. One of the disclosure issues in the approved Disclosure Review Document was whether those advertisements were maintained with the knowledge or consent of the Claimant. In relation to the question about custodians to be searched on that disclosure issue, the Claimant said that this issue was better addressed by witness statements than by Model D disclosure. Although it was established in re-examination of certain witnesses who worked or had worked for licensees that they personally were unaware of these advertisements, no witness was called to speak to the Claimant's knowledge or approval of them. No explanation for this omission was given. It is right therefore to infer that the Claimant was not in a position to give evidence favourable to its case on this issue, and

accordingly that the Claimant probably was aware of these advertisements. That fact also reinforces the conclusion that no damage was being caused by easyfundraising to the Claimant's marks.

317. Had the first easylife mark been in issue, contrary to my conclusion on revocation for non-use, it then clearly had a reputation (associated with the indicium easylife) at the relevant time and I would have accepted that the Signs in issue would be likely to make a link (but not a risk of confusion) in the mind of the average supporter (but not an advertising customer), for reasons given below in relation to the second easylife mark. I would nevertheless have rejected the s.10(3) claim for the reasons given above in relation to taking unfair advantage of Easylife (none alleged or proved) and damage to Easylife's repute or the distinct character of the mark, which apply equally in relation to the first easylife mark.

**s.10(3) Infringement – the @easyuk handle as at September 2009**

318. The claim for infringement of the Claimant's marks under s.10(3) by use of the @easyuk handle from September 2009 relates to the same marks, namely the first easyJet mark, easyHotel, easyGroup, and easyMoney.

(a) Reputation

319. I have accepted that easyHotel had a reputation by September 2009, by when it had opened three more UK hotels at prominent airport locations and several overseas hotels in prominent "city break" destinations.
320. easyGroup had a reputation for its specified services by September 2009, but only among its own licensees. It did not provide or offer administration or support services to other businesses, or publicly.
321. easyMoney had a reputation for loans and mortgages by September 2009 but not yet for the other specified services.

(b) Link between sign and trade mark

322. The particularly relevant factors in considering whether the general public using or considering using the easyfundraising platform would make a link between @easyuk and the marks are:
- i) the relatively greater degree of similarity of the handle and the word marks in question (first easyJet mark, easyHotel and easyMoney);
  - ii) the extent of the reputation of the marks;
  - iii) the image or knowledge that the average consumer would have of those marks, whether aural or visual, and how distinctive the marks had become;
  - iv) the appreciation that the consumer would have of the handle, which will be almost exclusively visual;

- v) the particular purpose of the use or possible use of the easyfundraising platform by the consumer, namely to use it to raise funds for good causes while shopping with other retailers;
- vi) the absence of any similarity between the services provided by easyfundraising and the easy+ brands, though bearing in mind that the consumer will be intending to buy goods and services on the platform; and
- vii) the absence of any proved confusion or risk of confusion, bearing in mind that there can be a link made without any confusion.

323. The existence of a family of marks is relevant to this assessment, as previously explained.

324. As at 2009, the analysis is much the same as in the previous section relating to 2005 and 2007. Although there was no specific evidence, easyJet was likely to have become better known than it was in 2005, and easyHotel is now sufficiently known on the market for hotel services. easyMoney had by this time become mainly a comparison website for various financial services, and was no longer providing a credit card, but there was no evidence that it had become better known. The average consumer would probably have heard of more easy+ brands than just easyJet.

325. Although the @easyuk handle is similar to the plain word marks, I have held that there was no risk of confusion, given the particular use made of the handle in connection with easyfundraising and the absence of any plausible evidence of confusion. As for consumers making a link, this is no more likely in connection with the use of the handle than it was with the use of the EF Sign, because it depends on whether the mere presence of the word “easy” would make a link in the mind of the average consumer. By 2009, none of the easy+ brands was so dominant in using the word “easy” that any use of “easy” would bring to mind easyJet or (much less) easyHotel or easyMoney rather than another business.

326. As regards commercial and professional users of advertising services, they would probably be less likely to make a link with easyJet, easyHotel or easyMoney, as they would have a fuller appreciation of the fact that other business that have nothing to do with easyGroup licensees use the word “easy” in their names, or in descriptive materials.

(c) Damage or taking unfair advantage

327. Had I found a link, I would have rejected the claims based on unfair advantage of or damage to repute or distinctiveness in any event for the same reasons as I have above in relation to the EF Sign and easysearch. The @easyuk handle was used to enable easyfundraising to exploit the opportunities of social media in connection with its own business, not to exploit the Claimant’s trade marks. It caused no damage to the repute or distinctive character of the relevant marks, for the reasons that I have given.

**S.10(3) Infringement – the 2015 EF Sign as at September 2015**

328. The claim for infringement of the Claimant’s marks under s.10(3) by use of the 2015 EF Sign from September 2015 relates to the same marks as at 2009, namely the first easyJet

mark, easyHotel, easyGroup, and easyMoney, but additionally the Easy Networks mark (from 11 January 2016) and the second easyJet mark.

(a) Reputation

329. The position in relation to easyJet, easyHotel and easyGroup is the same as previously, so that the first two had a reputation at the relevant date, but easyGroup only had a reputation among its own licensees for services associated with licensing brands. I accept that easyMoney had a reputation for all the specified services by September 2015.
330. Easy Networks had been trading since 1995. In view of its development and increase in turnover, as summarised at [115]-[117] above, I accept that it would have had a reputation by 2015, but only to any significant extent among business users of internet access and ISP services, not individual consumers. Easy Networks would not have been seen as one of the easy+ brands, for the reasons given by Mr Gwilliam.
331. easyJet had a reputation for retail services by September 2015 in relation to services to airline passengers only.

(b) Link between sign and trade marks

332. The particularly relevant factors in considering whether the general public using or considering using the easyfundraising platform would make a link between the 2015 EF Sign and the marks are:
- i) the very low degree of similarity of the 2015 EF Sign (and the plain word Signs) and the marks in question (first easyJet mark, easyHotel, easyMoney, easyGroup, the second EASYJET mark and Easy Networks);
  - ii) the extent of the reputation of the marks – considerable in the case of easyJet;
  - iii) the image or knowledge that the average consumer would have of those marks, whether aural or visual, and how distinctive the marks had become;
  - iv) the appreciation that the consumer will have of the relevant Signs, which is principally visual;
  - v) the particular purpose of the use or possible use of the easyfundraising platform or easysearch site by the consumer, namely to use it to raise funds for good causes while shopping with other retailers or doing searches;
  - vi) the absence of any similarity between the services provided by easyfundraising and easysearch and the easy+ brands, though bearing in mind that the consumer will be intending to buy goods and services on the platform; and
  - vii) the absence of any confusion or risk of confusion, bearing in mind that there can be a link made without any confusion.
333. The existence of the family of marks is relevant to this assessment, as previously explained. However, Easy Networks was not at the time part of the family of marks, even though (like Easylife and other businesses) it used the word “easy” as part of its trading name.

334. By 2015, the reputation of easyJet was very extensive: it was an immediately recognisable brand by that time. easyJet as a composite name (visually and aurally) was even more distinctive by 2015. That distinctiveness is underlined to an extent by the family of brands, in that they are additional names, in the same format, adding to the recognisability of easyJet and other easy+ brands; but the other brands had relatively limited reach, given the size of their businesses compared with easyJet, and I do not accept that the average consumer would make a link with any of the other brands specifically. What the family of brands does emphatically underline is the importance of the get up, i.e. Cooper Black font and white and orange livery, as a means of identifying easy+ brands, as compared with Easy Networks, easylife, easyfundraising and others.
335. Whether the general public using or considering using easyfundraising would make a link with easyJet is a question of balancing, on the one hand, the fame of the airline, supported to some extent by the family of brands, and, on the other hand, the very different context of use of easyfundraising and the very different sign. On balance, I consider that, despite the extent of the reputation of easyJet, the substantial visual, aural and conceptual differences between the Sign and the marks make it unlikely that a significant proportion of the general public would make a link between easyfundraising (or easysearch) and easyJet, or any of the other easy+ brands. The use of the word “easy” as the first part of a name remains essentially descriptive and was used by a large number of other businesses, some of which, such as Easylife, easyfix and Easy Clean, were also household names by this time. Mr Hansel identified a substantial number of such examples in Annexe 1 to his witness statement: many of these examples have been in business since the 1990s or earlier, and many more since the early 2000s. They have had an internet presence for many years, including in 2015. The same conclusion applies even more so in the case of Easy Networks (whether in connection with the 2015 EF Sign, the easysearch Sign or their plain word forms), which would not have been known by a significant proportion of the general public, as it was essentially a local business with business customers. It also applies in the case of the advertisers and their agents who made use of easyfundraising.
336. Mr Edenborough sought to rely on the word “proximity”, in the sense of proximity between the goods or services using the Signs and the goods or services sold under the marks, rather than “link”, in order to establish this necessary condition for infringement under s.10(3). The former is more prominent in recent EU jurisprudence, whereas the latter was more often used in earlier cases and in UK decisions. However, as the General Court explained in Copal Tree Brands, Inc. v EUIPO (T-445/21) [EU:T:2022:198] at [48], “[t]he concept of “proximity” between the goods, for the purposes of the application of Article 8(5) of [Regulation 2017/1001], must be understood as the existence of a simple connection between those goods”. In this case, however, there is no similarity of the services provided by easyfundraising and those protected by the marks, except for the advertising services provided by easyfundraising and easylife, and reliance is placed instead of the presence of “easy” as a prefix to the names. I do not consider that in such a case the word “proximity” adds anything to what is understood by “link” or “connection”.
337. I therefore reject the claim under s.10(3) based on use of the 2015 EF Sign (and where relevant the plain word form) as at September 2015 on the basis that the average consumer would not make a link between easyfundraising and easyJet or any of the other marks or services provided by the Claimant’s licensees, or with Easy Networks.

(c) Damage or taking unfair advantage

338. Had I concluded that a link would have been made with one or more of the marks at that date, I would still have rejected the claim on the basis that no unfair advantage of the distinctiveness or repute of the marks was being taken by EFL, and no damage to that distinctive character or repute was being caused.
339. There is no case pursued that EFL deliberately created the 2015 EF Sign to try to take advantage of the marks, and there is clear evidence to the contrary. The new sign was created for the reasons explained by Mr Miller, and with the specific intention of avoiding any perceived proximity to the easy+ brands. Given that easyfundraising had already been trading for 10 years by 2015 and that the new sign moved it further away from easy+ brands and emphasised what is different about easyfundraising's services, there was no advantage to EFL in using the 2015 EF Sign other than to clarify the distinct services that it offered, and no advantage was obtained that was unfair to the Claimant.
340. Given the considerable distance between the 2015 EF Sign and the marks relied upon and the volume of other users of the word "easy" in connection with their businesses, the case that use of the new sign caused harm to the distinctiveness of the marks is hopeless. They were only distinctive on the basis of acquired distinctiveness as compound names, or on the basis of the get up in which they were used by the Claimant's licensees. That distinctiveness was not impacted at all by easyfundraising.
341. As for harm to reputation, the same conclusion as I reached in [302]-[315] above applies here: there was no such harm caused, even if there was a link, because it was not proved that easyfundraising had reputational issues that could have harmed the Claimant's brands, or that it would have been perceived as having done anything wrong or morally unattractive.

**S.10(3) Infringement – the 2022 EF Sign as at June 2022**

342. The claim for infringement of the Claimant's marks under s.10(3) by use of the 2022 EF Sign from June 2022 relates to the same marks as I have considered as at 2015 above, but additionally the second easylife mark, registered as from 14 September 2020 for the following services:

“advertising and marketing services; retail services including on-line retailing, ... retail services conducted by mail order, all connected with the sale of ....[various retail goods]; wholesale services, retailing through the medium of broadcasting, all connected with the sale of .... [various retail goods]”.

343. The Defendants admit that the advertising and marketing services that EFL provided to retailers were identical to those specified in this mark, and that easylife had a reputation for on-line retailing and retailing by mail order.

(a) Reputation

344. The position in relation to easyJet, easyHotel, easyMoney, Easy Networks and easyGroup is the same as previously, so that the first four had a reputation at the relevant



date, but easyGroup only had a reputation among its licensees for services associated with licensing brands.

345. Easylife clearly had a reputation for advertising and marketing services among its professional customers (direct or indirect) for such services, and it is admitted to have had a reputation for its on-line and mail order retail services. I do not consider that Easylife would have been seen as one of the easy+ brands in June 2022. It was long established and clearly had a separate business from any of the easy+ brands, and it was not brought within easyGroup until 21 July 2022, following the litigation with easyGroup. Mr Wise confirmed that it was not until 2024 that easyLife (as it now is styled) adopted the distinctive easy+ branding (though still using the prominent tickball logo, which was the distinctive branding of easylife).

(b) Link between sign and trade marks

346. The 2022 EF Sign is somewhat more similar to the marks than the 2015 EF Sign, by reason of the colour change (yellow/gold, rather than pink, was a step closer to Pantone 021C orange, though still different from it) and the dropping of the strap line that described what easyfundraising provides. In considering as at June 2022 whether the average consumer would make a link with the services provided under the marks, it is therefore right to note that the similarity of the 2022 EF Sign and the marks was slightly greater than it had been in 2015, and that the new Sign was less distinctive than the previous Sign had been, though the prefix “easy” is of course present in both.
347. The reputation of the marks remained strong, in the case of easyJet, and moderate or of limited extent in the case of the other marks (apart from easylife). By 2022, the reach and reputation of easyfundraising had grown: Ms Heasley said that its business had grown substantially from 2015 (under £3 million donated in a year in which there were 1,642 new registered charities and 12,524 other new good causes) to 2023 (£6.5 million donated in a year in which there were 3,820 new registered charities and 19,361 other new good causes). In relation to the marks other than the second easylife mark, I reach the same conclusion as I reached in relation to the 2015 EF Sign, namely that the average consumer would not make a link (or connection) between the business of EFL, conducted on the easyfundraising platform using the 2022 EF Sign, and the Claimant’s relevant marks or brands. The 2022 EF Sign was not so similar to the marks that the link would be made on that basis, as it probably would have been if easy+ brand orange or Cooper Black font had been part of the Sign. The yellow/gold on the Sign could not be mistaken for Pantone 021C orange, or seen as alluding to it. The retail services provided by easyJet were a distinct, small sub-category of retail services, which would not be likely to be brought to mind by the fact that easyfundraising facilitated online retail shopping through its platform.
348. The position of easylife requires separate consideration. The supporters of easyfundraising, who used its platform to support good causes while buying goods and services from the thousands of retailers listed there, are also likely to have been users of other online retail opportunities. By 2022 these were on an almost unlimited scale (Sir Stelios’s idea of easyEverything had come to fruition), and they included online services provided by easylife. Indeed, easylife was an advertiser on easyfundraising from June 2012 to November 2022. That was only terminated upon easyGroup acquiring its registered marks.

349. I have previously held that a user of easyfundraising or easysearch would not be likely to be confused about the separate identity and business of EFL because of its distinct purpose, which every supporter embraced by registering a charity or good cause before using the platform. The existence of a link does not require confusion, however: only that the provision of goods or services using the sign would bring the mark to mind. Although the second easylife mark was only registered with effect from 2020, it is a plain word mark reflecting long established use of the name Easylife, which had acquired distinctive character. I have held that the coincidence of the prefix “easy” would be insufficient to create a link where the goods or services are dissimilar. With easylife, however, there is at least some high level similarity in the on-line retail services *facilitated* (but not provided) by easyfundraising (not by easysearch) and the on-line retail services specified in the second easylife mark. They both operate a “bringing together” format of easy retail, though there are differences, in particular that nothing can be purchased from easyfundraising.
350. I bear in mind the low level of similarity of the 2022 EF Sign and its plain word form and the second easylife word mark, which I have found to be the case. However, in view of the well-established and distinct reputation of Easylife and the degree of similarity of retail services facilitated by easyfundraising and provided by Easylife, I consider that a significant proportion of average consumers would probably make a link between easyfundraising and easylife. That is to say, a significant proportion of (but far from all) supporters or would-be supporters of easyfundraising would probably have the retail services provided by easylife brought to mind.
351. The link stops well short of amounting to confusion, however, as I consider that the average consumer would know that easyfundraising offered something distinct, which was not the same as or related to easylife’s retail offering. There was no persuasive evidence of confusion. Neither Mr Oakenfold nor Mr Wise, who had worked for Easylife Ltd, said that they were concerned that its customers would be misled into thinking that easyfundraising was, or was connected with, Easylife. I am unpersuaded by Mr Muir Wood’s riposte that the witnesses were not asked this question: they were the Claimant’s witnesses, and I can assume that, if they were able to support a case of risk of confusion, their witness statements would have said so.
352. The position in terms of link is different in relation to Easylife’s advertising services. These, and EFL’s advertising services, were provided to more sophisticated business customers or professional intermediaries, who would know the difference between the respective businesses and would not make a link with a different business that also offered advertising services (in a different format) merely because they both had “easy” in their names, even on a visual comparison of the easylife mark and the plain word form of easyfundraising or easysearch.

(c) Damage or taking unfair advantage

353. Although the 2022 EF Sign would bring to mind for a significant proportion of supporters the second easylife mark and retail business, there is no viable case of unfair advantage or damage to reputation or distinctive character of the second easylife mark here either. EFL gained no unfair advantage at the expense of Easylife when it designed and started to use the 2022 EF Sign in connection with its well-established and different business. Nor was a case advanced that it did. The claim based on damage to repute or to distinctive

character is rejected for the same reasons as I have rejected it in relation to the other easyGroup marks.

**Passing off EFL’s business as being or being associated with that of the Claimant’s licensees**

354. The parties ultimately agreed that the outcome of the claim for passing off would follow the determination of the outcome of the claims for infringement under s.10(2), save in relation to the business carried on under the indicium “Easylife”. (The reason for that was that if the first easylife mark was revoked for non-use, that did not mean that the Claimant or its predecessor had no goodwill in the indicium at the relevant times – which fact was admitted by the Defendants.) As the Claimant’s claim for s.10(2) infringement failed, I need only consider here the allegation that the Defendants passed off EFL’s business as being that of, or associated with, Easylife’s business.
355. The closing submissions of the Claimant were to the effect that there was passing off at all times from 2005, when EFL first started to use the indicium “easyfundraising”, but in its opening skeleton argument it had admitted that the defence of limitation pleaded by the Defendants applied to prevent the grant of any relief for matters pre-dating 4 February 2016, *i.e.* 6 years before the date of issue of its claim. The effect of the limitation defence goes further than that: it prevents the Claimant from proving any tort prior to that date. So I am only concerned with the conduct of EFL, and in particular whether there was any misrepresentation about the nature of EFL’s business, after that date.
356. The Defendants admit that Easylife has goodwill in the UK attached to its name when used in connection with a mail-order catalogue retail business and services provided through a general merchandise website. Misrepresentation and damages are however denied.
357. I have already held that, as at June 2022, despite the likelihood of a link between easyfundraising’s retail services and Easylife’s, the average consumer would not be confused into thinking that they were the same or associated businesses, and that there is no evidence of actual confusion. The differences between what easyfundraising offered and what a retailer such as Easylife offered were evident, and were underscored by the highly distinctive tickball logo used with the variants of the first easylife mark at all relevant times (and still used today). The same applies in relation to the advertising and promotion services offered by both, though no case was specifically advanced by the Claimant in reliance on these.
358. People would not assume a business connection between EFL’s services and the services for which Easylife (and now the Claimant) owned goodwill, or that the prefix “easy-” signified easylife. I have also found that there was no attempt by the Defendants to take advantage of the Claimant’s marks, and I make the same finding in relation to the goodwill of Easylife. Neither do the 2022 EF Sign, or if relevant the 2015 EF Sign or the easysearch Sign, or the indicia “easyfundraising” or “easysearch”, misrepresent the origin of EFL’s services as anything to do with Easylife.
359. That is sufficient to dispose of the passing off claim, but even if the Claimant had established an unintended misrepresentation as to the origins of EFL’s services, I would

nevertheless have found that no damage was proved to be caused by it. The Claimant's case was damage to goodwill based on injurious association with easyfundraising, not (for understandable reasons) loss of business to easyfundraising. For the reasons that I have already given in relation to the alleged s.10(3) infringements, I do not accept that any damage to the reputation of Easylife was caused by any association with easyfundraising, and no harm was done to the distinctiveness of Easylife's brand by EFL's business, which has been carried on successfully in parallel with Easylife since 2005.

### **The claim of joint and several liability against Palatine**

360. Since the claim against EFL fails, the claim against Palatine necessarily fails too.
361. Had I found EFL liable for trade mark infringement or passing off, I would have found that Palatine was not jointly and severally liable for the tort.
362. In light of the decision of the Supreme Court in Lifestyle Equities CV v Ahmed [2024] UKSC 17 ("*Lifestyle Equities*"), Palatine could not be an accessory to EFL's infringement and so jointly and severally liable unless it knew the essential facts that made the acts of EFL wrongful *and* its conduct was a cause of that wrongdoing. That would be so whether Palatine were alleged to have procured EFL's wrongdoing or participated in a common design.
363. Understandably, the Claimant had not before trial pleaded that relevant officers of Palatine had the requisite knowledge, and no application was made by Mr Edenborough to amend the claim to plead it. What was pleaded was that Palatine was "in overall control" of EFL, but that was only on the basis of a plea that it was a person with significant control of Project Cornwall Topco Ltd (the extent of which was not pleaded), which itself had 75% or more significant control of Project Cornwall Bidco Ltd, which in turn had 75% or more significant control of the Second Defendant. No particulars of an alleged common design of all the Defendants were pleaded.
364. Palatine is simply an investor in EFL's business. It first invested in August 2020. The claim against it can therefore only relate to infringement by the 2022 EF Sign and passing off. Two Palatine impact funds own some shares in EFL and the Second Defendant, but not such as to give them any control. Palatine is the fund manager of the funds, and has the right to appoint 2 out of 9 directors to the board of Project Cornwall Topco Ltd. It does not appoint any directors of EFL or the Second Defendant.
365. As a substantial investor, Palatine negotiated its representation on the board of EFL's ultimate holding company, and additional "step in" rights that would allow it to take voting control of that board in defined circumstances. Mr Gregson explained that those rights did not require Palatine to step in: they gave it the right to elect to do so, or not, as it saw fit. Mr Gregson agreed that step in rights had accrued in December 2021, but he said that they had not been exercised by Palatine, so that Palatine remained at all relevant times an investor with only 2 out of 9 directors on the board of Project Cornwall Topco Ltd, which approved the easyfundraising rebrand in 2022.
366. I accept Mr Gregson's evidence, there being no evidence to contrary effect or any real challenge to what he said. That means that Palatine did not have voting control of the

board at a time when easyfundraising's final re-branding was being planned and given effect in 2022.

367. Despite the difficulty with the Claimant's pleaded case in light of *Lifestyle Equities*, Mr Edenborough nevertheless did not abandon the increasingly forlorn pursuit of Palatine, describing it as a "procurement" claim (which is not what was pleaded). That did not absolve the Claimant from the need to plead and prove knowledge of wrongdoing on the part of the relevant persons acting for Palatine, and to prove causation (whether the case is one of procurement or common design).
368. Regardless of knowledge (which Mr Edenborough suggested was clear-cut, in view of the board's knowledge of the allegations made in the proceedings issued in February 2022 before the re-brand was implemented), the claim against Palatine would fail in any event, because nothing that it did (*viz* appointment of nominees to the board of Project Cornwall Topco Ltd and any instructions given to them, which were not proved) caused EFL to do any act that amounted to a wrong against the Claimant. At best, Palatine declined to exercise the rights that would have given it control of Project Cornwall Topco Ltd, and caused its 2 nominees to vote in favour of EFL's 2022 rebranding. But that conduct did not cause EFL to commit any tort: only EFL's decision, or, if it was taken for EFL by Project Cornwall Topco Ltd or by the Second Defendant, that company's decision, caused the tort to be committed. (The position in *Lifestyle Equities* was very different in terms of causation because Mr Ahmed and his co-appellant were the only directors of the infringing company: the issue in that case was knowledge of wrongdoing.)
369. In any event, as I have said, the Claimant has not pleaded and proved a case of knowledge of infringement on the part of Palatine.

**The counterclaim for invalidity of the Easy Networks mark and the second easylife mark.**

370. As I have found that there is no likelihood of confusion of the Signs and the Easy Networks mark or the second easylife mark, it is agreed that it is unnecessary for me to address this counterclaim further, which was conditional on a finding of a likelihood of confusion in relation to those marks.

**The claim for invalidity or revocation of the first EF Mark and the second EF Mark**

371. Given my findings that there is no infringement of the Claimant's marks by the Defendants nor any passing off, this part of the Claimant's claim necessarily falls to be dismissed.

**Disposal**

372. The combined effect of my findings is accordingly that:
- i) The first easylife mark and the easy.com mark are revoked for non-use with effect from a date to be agreed or determined, pursuant to s.46 of the 1994 Act;
  - ii) The counterclaim for partial revocation of the easyHotel mark is dismissed;

- iii) The counterclaim for revocation of the second easyJet mark is granted in part, to the extent that a fair specification of the class 35 services is restricted to retail services for airline passengers, with effect from a date to be agreed or determined;
- iv) The claim against all Defendants for infringement of the nine trade marks under s.10(2) and s.10(3) of the 1994 Act is dismissed
- v) The claim against all Defendants for passing off is dismissed;
- vi) The claim against the Second Defendant for invalidity or revocation of the first EF Mark and the second EF Mark is dismissed;
- vii) The counterclaim for invalidity of the Easy Networks mark and the second easylife mark will be dismissed.

## **SCHEDULE**

### **Eight alleged instances of confusion**

1. 10.6.18. Irvine Bell contacted EFL through the easylife retailer page on the easyfundraising website. The query recorded by a customer service ticket generated by the website is: “looking for clips or a holder to attach to wheelchair for holding walking sticks”. Rob Clee replied the following day on behalf of EFL: “not sure if it is us that you meant to contact? We deal with online shopping to raise donations for good causes.” It appears that Mr Bell was seeking to contact easylife, but it is unclear whether the mistake that he made was that easyfundraising was connected to easylife, or that he thought he could contact easylife through the retailer page on the easyfundraising website, or that it was part of the easylife website.

Some of the retailer pages on the website in 2018 display a “SUPPORT” button. It is therefore likely that Mr Bell sought assistance directly from the easylife page, using the function available on that page, given that the web address for that page is reproduced on the customer service ticket. If so, this suggests that the mistake he made was thinking that he could contact easylife through that page. That mistake is not evidence of confusion of the marks and the EF Sign, the 2015 EF Sign or the word easyfundraising, or indirect confusion about whether easyfundraising was an easy+ brand company.

The brevity of Mr Bell’s message and the two spelling mistakes suggest that he was in a hurry, and accordingly he may not have been using the degree of care and circumspection attributed to the average consumer.

2. 28.8.18. Mrs Jill Halliwell sent an email to to [enquiries@cdrl.org.uk](mailto:enquiries@cdrl.org.uk) about a transaction on her bank statement labelled “Easylife”, suggesting that it was in error and asking for

a refund. No evidence was led or submission made about the domain name, but it is currently the domain name for Consumer Dispute Resolution Ltd. The original query was not answered and was later forwarded with a chaser and reached easyfundraising. It is unclear how it reached them, or what address was used. Rob Clee replied: “we are easyfundraising and not easylife, you would need to contact the retailer direct as we are not associated with them”.

Again, it is unclear what mistake Mrs Halliwell made, if any. Having failed to get a response from CDRL, Mrs Halliwell appears to have tried a different route to get a response, but why she (inferentially) contacted easyfundraising is unclear. It cannot be assumed, as the Claimant suggested, that this was a case of a consumer mistaking one company for another. It may be a simple misdirection of an enquiry, or it may be that the consumer used easyfundraising and thought that it could be used as a means of contacting easylife, as easylife had a retailer page; or indeed that CDRL forwarded the first chaser email to the wrong address. It does appear that Mrs Halliwell knew that it was easylife that had charged her account.

Caution has to be exercised in interpreting such documents without any witness to explain them. There are too many possible explanations for this to be credible evidence of direct or indirect confusion of easyfundraising and easylife.

3. 8.10.18. Dave Harley used the @easyuk handle on Twitter to attempt to contact easyJet. In response, easyfundraising pointed out Mr Harley’s mistake, which was to use @easyuk instead of @easyJet as easyJet’s Twitter handle, and he replied: “Yes, apologies. What a donut”. This is therefore either evidence of someone mistakenly thinking that @easyuk belonged to easyJet (direct, not indirect, confusion) or of someone mistakenly using the wrong handle. The acknowledgment of mistake suggests the latter, and is evidence that Mr Harley was not acting with the reasonable circumspection and attention of the average consumer (there are no other recorded examples of anyone else making the same error, despite the breadth of the disclosure exercise). One would expect the average consumer attempting to contact a retailer to check to make sure they had used the right address. This is not therefore evidence of confusion on the part of the average consumer.
4. 25.11.20. Clifton Cricket Club posted the following message on Twitter:

“Thank you to our @easyuk supporters who have now raised over £3000 for the club by shopping online. #FreeMoney #EasyMoney #BlackFridayDeals #Clifton #Cricket.”

It is clear from that post that the tweeter understood that @easyuk was associated with easyfundraising. The inclusion of #EasyMoney, in context, is probably just a description of what easyfundraising had done for the club. There was no evidence that easyMoney operated at the time a Twitter handle using those terms. The post is encouraging further shopping through @easyuk to earn money for Clifton Cricket Club, pointing out that Black Friday deals would be available from retailers as a further incentive.

This is clearly not evidence of direct or indirect confusion of easyfundraising and easyMoney.

5. 16.1.21. A record of a telephone call to easylife on its database appears to show that a customer contacted easylife “asking easy fundraising – advised to check on easylife website ...”. It is impossible to reach a conclusion, based on this abbreviated and possibly inaccurate note, about what if any mistake was probably made by the customer or by the customer services assistant. It is not even possible to be confident about the nature of the enquiry that was being made. It could have been that the customer had asked easyfundraising about something and was now asking easylife (knowing what each of the companies was), or that the customer was asking easylife about easyfundraising (e.g. whether easylife purchases could be made through easyfundraising), or that the customer was asking for easyfundraising (less likely, in context). The two more likely alternatives are not evidence of confusion, direct or indirect. Whether a mistake was made by the customer or by the assistant is unclear.

This is not reliable evidence of anything that is relevant.

6. 20.1.21. Norfolk Cricket Club posted on Twitter:

“Need some vital funds for a project or boost the bank. Use @easyuk for online shopping or the app with companies donating towards your club. Ideal with the current lockdown. Spread the work, promote across your members, or use the link on your play cricket site. **#EasyMoney**”

This post is in the same thread as the Clifton Cricket Club post at 4 above. Once again, in context, this is probably an encouragement (looking rather like a generic advertisement of easyfundraising rather than one originating with Norfolk C.C.) to spend on easyfundraising for the benefit of the club, with the @easyuk handle followed by #EasyMoney being descriptive of the result, not a reference to easyMoney. It is obvious that the poster knew that @easyuk was associated with easyfundraising.

There is no evidence of confusion here.

7. 8.7.22. Hope4Rugby Ltd posted a suggestion on X to use @easyuk when booking a short getaway or a 2022 summer holiday, explaining that an average family holiday could raise over £110 for Hope4Rugby. The post was accompanied by a visual montage bearing a copy of the 2015 EF Sign with a bold heading “HELP US RAISE FREE DONATIONS when you book your holidays ...”, and various images of beach holidays and a four-engined aircraft in white with orange trim. Carolyn Merrett replied: “Thanks for alerting us to this aspect of the Charity **#easyjet**”.

Hope4Rugby is a registered charity supporting homeless and badly-housed people in Rugby, as indicated on the same page as the post. By the date of the post and reply, easyJet was no longer an advertiser on easyfundraising, but it had been advertising on the platform for over 10 years until it was removed on 20 August 2021.

This post may be evidence of direct confusion, i.e. thinking that easyfundraising was the same thing as easyJet. However, if that is so, it is difficult to see why Ms Merrett added the handle #easyjet. It may also be evidence of indirect confusion, i.e. that easyfundraising and easyJet are connected in some way. What she meant by adding easyJet’s hashtag is unclear. It may have been that she was pointing out (erroneously) that easyJet holidays could be booked through easyfundraising – she might have done so the previous summer, when easyJet was an advertiser. Or she might have thought



that by tagging #easyjet it would bring the original post to more people's attention. This is of course speculation, but it demonstrates why these impenetrable posts are difficult to interpret without evidence from the writer.

What does seem more likely than not is that the reference to "the Charity" was to the charity that had posted the original message, not easyfundraising itself.

In summary, although it is possible that the post is evidence of indirect or direct confusion of easyfundraising and easyJet, I am unable to conclude that it probably is.

8. 30.11.22, 5.12.22, 12.12.22 and 5.1.23. This item relates to a thread of emails starting with an email from Joanna Trochimiuk, an account manager at Brand24, to Ms Heasley at easyfundraising. It is headed: "**easygroup report**" and seeks to promote an analytical reporting product. Having apparently received no response, Ms Trochimiuk chased on 5.12.22 under the same heading, and again on 12.12.22 and 5.1.23. The last chaser produced a response from Ms Heasley: "we're not part of the easyGroup".

Ms Heasley addressed this in her witness statement and was asked about it in cross-examination. She said that easyfundraising was using at the time a listening tool, to "listen" to what people were saying about the company, and also started listening to "easyGroup" to see what people were saying about this litigation (which started in February 2022). She said that she believed that Brand24 referred to "easyGroup" because easyfundraising had "easyGroup" included as a keyword to listen out for.

In cross-examination, Ms Heasley confirmed that easyfundraising was actively listening for anything on social media where easyGroup and easyfundraising were being used in the same context, to be aware of what was going on. They had previously had an account with Brand24 but had terminated it.

Ultimately, there is no evidence of what Ms Trochimiuk was thinking by using the heading "easyGroup", and Ms Heasley's explanation of the probable reason for use of "easyGroup" was unchallenged (though it does not itself explain Ms Heasley's response to Ms Trochimiuk). It may be that Ms Trochimiuk thought that easyfundraising and easyGroup were connected and that this is evidence of indirect confusion; however Brand24, as a media analytics company seeking to sell its products, is not part of the relevant public in respect of any services provided by easyfundraising. Further, it was based on a perusal of data not available to the average consumer.

Any confusion was therefore irrelevant to the assessment of likelihood of confusion.