



Neutral Citation Number: [2022] EWHC 3327 (Ch)

Case No: IL-2019-000120

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: 21/12/2022

Before :

SIR ANTHONY MANN

Between :

EASYGROUP LIMITED

- and -

- 1) EASY LIVE (SERVICES) LIMITED**
(2) ACHILLEAS PAVLOU ACHILLEOUS
(3) JONATHAN RICHARD DEAN BURNSIDE

Claimant

Defendants

Michael Edenborough KC and Stephanie Wickenden (instructed by **Edwin Coe LLP**) for
the **Claimant**

Chris Aikens (instructed by **Hansel Henson**) for the **Defendants**

Hearing dates: 5th, 6th, 7th, 12th & 13th October 2022

Approved Judgment

This Judgment was handed down remotely at 10.30 am on Wednesday 21st December 2022
by circulation to the parties or their representatives by email and by release to the National
Archives.

Sir Anthony Mann :

Introduction

1. This is a trade mark and passing off dispute between the owners of certain marks (the claimant) and those alleged to have infringed (the first defendant as the infringer and its two directors, the second and third defendants, who are sued as joint tortfeasors). The claimant brings the infringement claim and seeks a declaration of invalidity of a mark registered by the first defendant. I shall call the first defendant “ELA” and the claimant “Easygroup”. Part of ELA’s response is to seek certain revocations of the specifications of some of the claimant’s marks. The result of this, the nature of the business of the group of which Easygroup forms part and the number of marks relied on means that there are a number of interlocking factual matters applicable to various aspects of the case.
2. Easygroup also brings a passing off claim. Mr Edenborough KC, leading counsel for Easygroup, accepted that in the main the passing off claim added nothing to the claims. If he won on his trade marks he did not need it. If he lost then, by and large, and depending on the issues involved, his passing off claim would not save him, though there were one or two wrinkles in the analysis in which might need his passing off claim. In the light of that I shall not dwell on the claim save insofar as might be necessary.
3. Mr Aikens, for the defendants, accepted that if ELA was liable then the other two defendants were similarly liable and he did not seek to suggest that they could escape the same liability as their company, for the purposes of this action. As a result I do not have to consider their positions separately and can focus on the position of ELA.
4. At my request counsel reduced the number of their favoured case citations to an agreed statement of law, where agreement was possible, to avoid excessive citation of different authorities saying the same thing in different terms. I am grateful to them for their achievements in this respect.

The parties

5. The claimant is a member of the well-known “Easy” group of companies founded by Sir Stelios Haji-Ioannou. The best known entity is probably the airline business easyJet, but there is and has been a number of other companies and businesses of various levels of longevity, including easyCar, easyBus, easyEverything (later easyInternetcafé), easyHotel and easyMoney. The easy brand is central to this overall business and where expressed in stylised fashion is expressed as a prefix to a conjoined word alluding to the activity of the business. The group has taken many steps to try to protect it from others trading with “Easy” in their name, but not against every such business. This action is one of those enforcement steps.
6. Easygroup is the holder of relevant trade marks. The title to the action expresses Easygroup as “acting on its own behalf and as representative of the companies in the EASY group which use the EASY brand”. It is on that basis that it claims to be able to bring the passing-off claim. The widespread use of the “Easy” brand across a range of businesses across a period of time going back to the 1990s gives rise to “family of marks” points in this case. Further details of the group are referred to below.
7. The first defendant is a company incorporated by the second defendant (Mr Achilleous) and the third defendant (Mr Burnside) to develop and market software and other services for the auctioneering trade. There are three key elements of that business. The first is a sort of online marketplace which can be visited by members of the public and which presents a gateway to subscribing auctioneers of chattels - those auctioneers do not offer real estate auctions via anything to do with ELA. The catalogue of subscribing auctioneers is mirrored by ELA and the wares presented to the bidding public. The selling auction-house is identified there, and ELA has its own branding on the site, including the signs complained of in this action. When an auction goes live a bidding purchaser can bid there, via the second and third elements.
8. In addition to this activity is a variant on the part of ELA, in which it advertises forthcoming auctions and refers would-be bidders to the auction house’s website without itself hosting the catalogue and bidding features.
9. Second is the live auction element. ELA operates software (operating through websites) allowing an auction house to conduct a live auction on-line. Bidders can join in on line and place bids by pressing buttons on-screen, all in real time. This software operates through ELA’s site if a bidder enters in that way, and it is also used to power online auctions for auctioneers operating through their own sites without any fronting by ELA. In that latter instance ELA may or may not be identified as the provider of the software (by such designations as “Powered by ...”) but where it is made the reference is hardly noticeable. These

are known as “white label” sites. As far as a bidder is concerned he/she will apparently just be dealing with the auctioneer and will know nothing of ELA’s underlying software (unless there is a reference to it on the website, which, if there is, will only be slight).

10. The third element is an integrated back-office function for auctioneers (integrated with the bidding side) which operates once an auction is concluded with a successful bid. This deals with all the paperwork and payment consequences of the successful bid, such as billing, recording and receipt and payment of commission.
11. I received a fuller description of those activities but do not need to develop the detail here. An auctioneer can choose the service it wants. If it opts for the bidding software it can either incorporate it under its own website (so that it runs the bidding side with ELA’s software operating “below the surface” of the auctioneer’s website, the “white label” version, as described above) or it can be run through the ELA front end which presents the catalogue and bidding opportunity through its own front end, identifying itself as providing the “marketplace” but also identifying the relevant auctioneer as the actual auctioning entity. The auctioneer may or may not wish to use ELA’s back-office product.

The claimant’s marks sued on

12. The claimant’s marks and the categories of services relied on appear in Appendix 1 to this judgment. This Appendix sets out only the services within the classes which are relied on in this action in some way or another. Some of the services are highlighted in grey/yellow. Those highlighted are the services which are said to be identical or similar to the services offered by the defendants under the offending signs, and they are also the services which are the subject of the revocation counterclaim brought by the defendants on the basis of non-use. Some of the marks have coloured elements; the Appendix seeks to indicate where there is colouring in order to clarify matters where a print of this judgment is in black and white only. The narrative hitherto will reveal that it looks odd that some of the services, mainly those under the easyJet marks, are relevant to this action when it is perfectly plain that the defendants do not provide them, but they are in fact relevant to an infringement claim under Trade Marks Act 1994 section 10(3) (unfair advantage).
13. Those marks, and the evidence, reveal that it is an important part of the claimant’s branding that in its stylised form the brand name starts with a lower

case “e” and then has an uppercase letter in the part of the brand which alludes to the services. Where this judgment refers to those marks or brands it attempts to reproduce that format.

14. The column “Type of infringement alleged” refers to sections of the Trade Marks Act 1994.

The offending signs

15. The signs of which complaint is made appear in Appendix 2 to this judgment, together with the dates from which they are said to have been used. For the purposes of identification hereafter the device signs are given numbers which I will use when referring to them individually. They are all presented as white text on a blue background. There were some instances in the papers where there seems to have been a different colour (usually green) but it was never orange, unlike the Easy group’s principal branding. Their development is dealt with below in the context of dealing with the claims and defences.
16. The two text signs (EASY LIVE AUCTION and EASYLIVEAUCTION in upper and lower case forms) did not feature much in the case. Most of the emphasis was on the stylised versions. They add little to the claims based on the stylised signs, and it will not be necessary to refer to them much.

Relevant parts of the history of these proceedings

17. The claim form in this case was issued on 8th October 2019. The claim was originally based on 24 registered trade marks and relied on a very large number of different goods and services in the specifications. By a process of dispute and agreement over time the marks in suit were narrowed to the marks and services which now appear in Appendix 1. The claim in relation to the easyProperty mark was added by amendment with effect from 9th February 2022. This added a new cause of action which gives rise to issues about limitation, as appears below.
18. The defendants defended the claim and brought a counterclaim for revocation of various marks to various extents, based on non-use for a 5 year period. That counterclaim did not originally include the Easy Networks mark because it had not been registered for 5 years at the date of the original counterclaim (in 2019),

but by February 2022 it had been registered for more than that period of time, and on 22nd February 2022 the counterclaim was amended to claim partial revocation of that mark.

Witnesses

19. I heard or otherwise received evidence from the following witnesses. With one exception they were all good witnesses doing their open best to assist the court and their evidence can be accepted (save in any minor respects where I suggest otherwise).

Claimant's witnesses

20. **Mr Gavin Richardson.** He is a professional graphics designer who worked for the Easy group for 12 years and is now retained by the group as an external consultant. He gave evidence about the goodwill, reputation and branding of the group and its constituent companies from time to time.
21. **Mr Anthony Anderson.** He is a marketing consultant who was employed for a time within the Easy group, and then as an external consultant. Via an unchallenged witness statement he gave evidence of what he described as the “birth” of the Easy brand with easyJet, and its subsequent development through various other brands, and in particular easyEverything (which became easyInternetcafé).
22. **Mr Jonathan Wright.** He is a Designer and Front End Developer employed by the claimant. His principal evidence went to a domain name or email box which was said to capture references by the public about the use of “easy” in relation to non-Easy group companies (“brand thieves” as the group chooses to call them).
23. **Mr Jonathan Cooke.** He gave evidence of use of the easyProperty mark before based on his involvement in the claimant’s licensee business from 2017 to 2019.
24. **Mr Robert Ellice.** He gave evidence of the genesis and development of the easyProperty business and mark.

25. **Mr Simon Miles.** Mr Miles is a partner in Edwin Coe LLP, solicitors to the claimant in this action. His original evidence in chief was intended to introduce the product of searches for reviews of ELA, but his cross-examination was more about his supervision of the disclosure process in this action and the current use of Easy brands. He was criticised by Mr Aikens over his conduct of the disclosure process, but I find that that criticism was misplaced.
26. **Mr Richard Gwilliam.** He gave evidence about the development of the Easy Networks brand and mark. He originally developed them and the underlying business over several years outside the Easy group stable. He was a particularly clear, honest and straightforward witness.

Defendants' witnesses

27. **Mr Achilleas Achilleous (the second defendant).** He is a founder and director of ELA and gave evidence of the genesis of the ELA business and how it is conducted. He was not always clear in his descriptions of how things worked, but in the end he was a truthful witness. I acquit him of the charge of giving self-serving evidence, levelled against him by Mr Edenborough.
28. **Mr Jonathan Burnside (the third defendant).** Mr Burnside is co-founder and director of ELA and he gave evidence about the genesis and development of ELA, its technology and its branding. He was responsible for developing the branding across the several signs which are the subject of this action. In that last area he was very defensive and cagey when asked to consider basic similarities, and his "cheeky" (his word) use of motifs from other brands in one particular circular. In the important area of unfair advantage under TMA section 10(3) I consider I have to approach his evidence with particular care, and as will appear I do not accept an important part of it.
29. **Mr Philip Poyser.** He gave evidence of some of the use of auction systems in the industry generally and of his experience of working with ELA's software. He was also presented (though not very strongly) as a consumer of marks for the purposes of this action, as not being the victim of any confusion. He was an honest and straightforward witness.
30. **Mr David Hansel.** Mr Hansel is the solicitor for the defendants in this action, and he has also acted for a number of other users of signs when sued by the Easy

group. He gave evidence of the extent to which the word “easy” is used with another word by many other trading entities in order to show how common these “easy+” brands still are outside the Easy group.

The Easy group business and marks

31. The various marks relied on in this case form part of a portfolio of marks of which the group (through the claimant, easyGroup) is the proprietor. The group has developed its branding over the years by adding and exploiting (in various degrees) brands which have the word “easy” at the beginning of a made-up word and a word describing the services as the rest of the word. Its branding more usually appears in a word device with the same word combination, but with a lower case “e” for “easy” and a capital letter for the service part of the word. A characteristic font (Cooper Black) is used in all device marks. The evidence of Mr Richardson and Mr Anderson charts a lot of this history. It would appear that Arnold J received similar evidence to that placed before me about all this (albeit presented by Sir Stelios Haji-Ioannou, the founder of the group) in *W3 v Easygroup Ltd* [2018] EWHC 7; [2018] ETMR 40, set out at paragraphs 18-62. That narrative, as it stands, is accepted as being accurate (so far as it goes) by the defendants, and the parties before me said I could treat it as being a proper summary. Rather than set it out all over again in my own words, I am with gratitude content to adopt that narrative, and it should be treated as being read into this judgment..

Non-use - the law

32. ELA counterclaims for revocation of various of the categories of services of various of the marks either partially or wholly, and relies on revocability as a defence to the infringement claim. Because any revocation, and in particular its extent, is capable of affecting infringement issues hereafter I will deal with non-use first. This counterclaim relates only to the easyGroup, easyMoney, easyProperty and Easy Networks marks.
33. ELA relies on the revocation provisions in TMA section 46:

“46. Revocation of registration

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

(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.”

34. Mr Aikens relied on a five year period leading up to the date of issue of the writ for the easyGroup, easyMoney and easyProperty marks, ie 8th October 2014 to 7th October 2019; and 5 years prior to the date of the counterclaim for the Easy Networks mark ie 10th February 2017 to 9th February 2022. Mr Edenborough was prepared to meet that case, though he said that the dates for easyProperty were “wrong”. I shall therefore take those as the relevant periods.

Non-use - general considerations and partial revocation

35. The parties were agreed on the basic underlying law on the quality of use required to perpetuate a mark, and the authority which best encapsulated it. The headline principles for the assessment of whether there has been genuine use of a trade mark were set out in *Walton International Ltd & Anor v Verweij Fashion BV* [2018] EWHC 1608 (Ch);[2018] E.T.M.R. 34, per Arnold J at §§114-118 (and in what follows I remove some of his extensive citations in order to assist presentation of this judgment):

“114. The law with respect to genuine use. The CJEU has considered what amounts to “genuine use” of a trade mark in a series of cases [citations omitted]:

115. The principles established by these cases 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: [citations omitted].

(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: [citations omitted]

(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 Accordingly, affixing of a trade mark on goods as a label of quality is not genuine use unless it guarantees, additionally and simultaneously, to consumers that those goods come from a single undertaking under the control of which the goods are manufactured and which is responsible for their quality:

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: ... 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: ... [citations omitted]

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the

proprietor is able to provide; and (g) the territorial extent of the use: ...[citations omitted]

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

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

36. The issue of partial revocation arises in this case. ELA avers that in some instances a given easy mark is registered in respect of a broad category of services but the proprietor has established use of only a narrower sub-class within the broad category. In those circumstances ELA maintains that the mark should be partially revoked and infringement denied where the remaining use does not cover the activities of ELA. It was agreed that the principles applying to this are those set out in *Merck KGaA v Merck Sharp and Dohme Corp* [2017] EWCA Civ 1834:

“”

“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.”

37. To those factors Mr Edenborough added that it was not necessary to prove continuous and uninterrupted use for 5 years in order to save a mark from revocation on this ground. It was sufficient that the mark was used during part of the relevant period - *OHIM v Charlott* EU:T:2007:337 at paragraph 41. Use in advertisements for the services in question is use for these purposes - *Standard International Management v EUIPO* [2022] ETMR 44 at paragraph 42.
38. Mr Aikens drew to my attention what was said by Mr Daniel Alexander QC in *Plymouth Life Centre Trade Mark* [2013] RPC 34 about the quality of the evidence required and the burden of proof:

“19. For the tribunal to determine in relation to what goods or services there has been genuine use of the mark during the relevant period, it should be provided with clear, precise, detailed and well-supported evidence as to the nature of that use during the period in question from a person properly qualified to know. Use should be demonstrated by solid and objective evidence of effective and sufficient use of the trade mark on the market concerned.

20. Providing evidence of use is not unduly difficult. If an undertaking is sitting on a registered trade mark, it is good practice in any event from time to time review the material that it has to prove use of it. Courts and tribunals are not unduly harsh as to the evidence they are prepared to accept as establishing use. (...)

22. The burden lies on the registered proprietor to prove use. However, that and other cases show that there is no particular way in which use must be established. (...) it is not strictly necessary to exhibit any particular kind of documentation but if it is likely that such material would exist and little or none is provided, a tribunal will be justified in rejecting the evidence as insufficiently solid.

That is all the more, so since the nature and extent of use is likely to be particularly well known to the proprietor itself. A tribunal is entitled to be sceptical of a case of use if, notwithstanding the ease with which it could have been convincingly demonstrated, the material actually provided is inconclusive.”

39. Those are the principles that I shall apply in considering the evidence of use and for the purposes of the revocation case. I will consider each of the marks separately. The bulk of the evidence was a large number of contemporaneous documents each of which was said to amount to, or to demonstrate, use. They each have to be considered to see what they really show, which is a laborious but necessary exercise. There was also some evidence from Mr Anderson and Mr Gwilliam to which I shall refer as necessary.

40. Mr Edenborough urged on me that I should take a “global” view of the evidence, and resist the attempt of Mr Aikens to have me consider and reject each piece of evidence separately without considering it “globally”. I think that by this he meant that a piece of evidence (usually a document) which by itself might not clearly demonstrate use might be part of a pattern of two or three other pieces of evidence (documents) which did demonstrate use. I accept Mr Edenborough’s thesis, and will bear the point in mind when I consider how his individual pieces of evidence knit together.

Non-use - a Brexit point on the whereabouts of use

41. There is a Brexit-related quirk in relation to one mark, namely the easyProperty mark. That was an EU mark which was made a “comparable mark” which is treated as being re-registered as a UK mark from 1st January 2021 under Schedule 2A paras 1 and 2 of the 1994 Act (added by amendment). In relation to such marks there is a modifying provision in relation to non-use in Schedule 2A para 8:

“8(1) Sections ... 46 apply in relation to a comparable trade mark (EU), subject to the modifications set out below.

(2) Where the period of five years referred to in sections ... 46(1)(a) or (b) (the “five-year period”) has expired before IP completion day—

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

(b) the references in sections ...46 to the United Kingdom include the European Union.”

42. Sub-paragraph (2) applies because the 5 year period for the easyProperty mark did indeed expire before IP completion day (31st December 2020).
43. It was accepted by Mr Edenborough that the trade mark proprietor had the burden of proof on the question of use within the period, but Mr Aikens took a point of construction in relation to those Brexit related provisions. He said that the effect of the substitution effected by paragraph 8(2)(b) was that Easygroup had to demonstrate use in the EU other than the United Kingdom, and since on the facts it could not establish use outside the UK there was no qualifying use. Mr Edenborough submitted that that mis-read those provisions and did not give proper effect to the word “includes” - Mr Aikens submission would require it to mean “means”, and that was not the word which was used.
44. I do not consider that those provisions have the slightly bizarre effect which Mr Aikens would attribute to them. His first problem is that he has to distort seriously the wording of the Act. The word “includes” does not mean “means” on any natural construction of the word. I can see no reason why that very different meaning should be forced on to the word used. The object of the provisions is reasonably obvious. It is to prevent an unfairness operating as a result of Brexit. Before IP completion date an EU mark such as Easygroup’s would have survived a non-use attack by proving use in the EU, which would have included the UK at the time. Those marks were translated into a UK mark by amendments to the Act. It is logical to allow use in the UK to preserve such marks, and the Act achieves that through section 46. It would be anomalous if use in the rest of the EU, which would have preserved the mark before 2021, should suddenly not preserve it at all after 31st December 2020. That anomaly is supportive of Mr Edenborough’s construction of “includes” - he says, perfectly reasonably, that “includes” means “includes” and does not mean “only”. There was further debate before me as to the extent to which Mr Edenborough derived further support from the pre-Brexit regime of converting EU marks to a territorial mark where the relevant market was confined to a limited number of territories, but I do not need to complicate the reasoning by developing that.

45. It follows that Mr Edenborough can succeed under this mark if he established UK-only use and does not have to prove EU as well or instead.

Non-use - the Easygroup marks

46. For these purposes I can treat all the easyGroup marks as one. The services specified against these marks in relation to which revocation is sought are shown in Appendix 1, but I set them out again here. They are, in relation to the 415 mark:

“”

“Advertising, marketing and publicity services; business information services, promotional services;”

And similarly in relation to the 160 mark:

“Advertising, marketing and publicity services; business information services”

For the sake of convenience I shall call these the “contested services”, and use the same expression in relation to contests on other marks.

47. A close scrutiny of the whole cited specification for the 415 mark shows that there are apparently two levels (I am avoiding using the word “type” at this stage in the debate) of services so far as promotional and business information services are concerned. The second, appearing at the end of the citation, are such services provided to licensees. The first are the services provided to the general public, or perhaps the general business community. That which I have described as the second seems to have arisen as a result of partial revocation in *Easygroup Ltd v Easylife Ltd* [2021] EWHC 2150 (see paragraph 226). Mr Aikens does not seek to challenge the narrower, licensee-based part of the specification. His target for non-use is the wider formulation, in respect of which he says no use has been established, on the principles of *Merck* in respect of partial revocation. He submits that *Easylife* justifies the approach of confining the specification to the use actually made of the mark which, if it existed at all, existed in relation to services provided to licensees of the brand.

48. There is no narrower “licensee related” specification in relation to the 160 mark. It is essentially a differently ordered version of the contested services in the 415 mark, and can be taken with it. Mr Aikens’ submissions apply to this as it stands.
49. Mr Edenborough disputes that analysis. He cautioned that this analysis oversteps the line as warned against in *Merck*. He accepted that it was not inappropriate to confine business management and administration services to those provided for licensees, as in *Easylife*, but advertising and promotional activities were broader and more public facing and were not confined to being provided only to licensees.
50. I therefore have to decide what use was made of the marks for advertising and promotional activities, and if it was just the narrower use (licensee-based) whether that is in effect an aspect of the wider use, so as not to be unduly or artificially separated, or, to put it another way, whether the situation is within paragraph 246 or within paragraph 247 of *Merck* as set out above.
51. So far as that last point is concerned, I have concluded that the two categories are different and the one is not merely a facet of the other. The fact that such services as were provided are provided to licensees would not be surprising. It is in the interests of a licensor to promote the licensee’s business, particularly where there is a brand identity. Doing so is a different activity from providing advertising/promotional services to the business community generally.
52. That is looking at the matter generally. It is demonstrated by this case. Easygroup’s function is to develop the licence business and support the brand which has been licensed. That involves, or may involve, providing various levels of business support, and that may or may not involve (Mr Edenborough says it did) providing marketing and promotional services. If it did, such services, if provided, were all part of the package. Easygroup had a group interest in promoting the Easy sub-brands. The activity of providing similar services to the business public generally would never be part of that business model. That is not just because Easygroup would prefer to confine its activities; it is because the activities are sufficiently different as to require a different business approach. I consider that they are two separate categories and that use of a mark for the licensee-based activities is not a mere manifestation of the wider based activities. This is borne out by the evidence, such as it is, as will appear. The position is analogous to that which arose in *Easylife* when considering how the extent of use should be viewed. In that case Easygroup actually accepted that a wider category of use should be revoked and substituted by the licensee-based use which now appears in the specification.

53. Turning to the evidence, Mr Edenborough relied on some historical evidence of Mr Anderson given in this case. I do not consider that this evidence provides any evidence of use of the marks for the relevant purposes in the relevant period. Indeed, it is so general as to not provide much specific evidence of use at all at this point. Mr Edenborough's real case depends on specific examples which he provided and to which I shall shortly turn.
54. Of more potential relevance, as background to help one understand the material, is evidence recorded as given by Mr Anderson in a prior case (*EasyLife, supra*) and relied on by Mr Aikens. The record of his evidence in the judgment is relied on as evidence of the underlying facts, and Mr Edenborough did not dispute its admissibility for that purpose, though he said it was irrelevant. That evidence was to the effect that Easygroup was not a venture in its own right; it provided services in support of licensees of its trade marks; and it held the IP rights of the group (including the relevant marks). That is relevant and is a starting point but it does not say anything about the services that were provided.
55. I therefore turn to the specific examples relied on by Easygroup.
56. **Easygroup invoice dated 1st December 2017.** This document bears the easyGroup mark at its head and as part of the company name at the foot. It is an invoice for a royalty payable under a licence agreement. Of itself this document does not demonstrate that the sums invoiced were for any activity within the contested services. All it shows is an invoice for a royalty fee. The fact that it bears the easyGroup mark does not link that mark with the contested services. This is not evidence of relevant use.
57. **Ledger entries showing advertising spend of Easygroup 2015-2017, and credit card records showing apparent expenditure.** The entries show some sort of expenditure on advertising and there is a suggestion that it somehow relates to licensed businesses, namely easyBus or EasyTransport, judging by the entries. I agree that these entries would be consistent with the provision of some sort of advertising, but quite what it was does not appear. Even if the services were provided for licensees, this evidence does not demonstrate that the Easygroup mark was used in connection with the provision of those services. It is certainly not demonstrated with the clarity required by the authorities. If that were the case it ought to have been easy (no play on words intended) to fill the gaps, but that has not been done.
58. On no footing does this material show the provision of business information services.

59. **Screenshots from easyGroup.co.uk in April 2021.** This is a screenshot of a web page in which the easyGroup mark appears at the top and it refers to “Easy brands of London”. Lower down there is a box saying: “Welcome to easy London, creator and owner of the easy family of brands” and below that are 6 pictorial boxes referring to Easy brands - easyJet, easyHotel, easyGym, easyStorage, easyBus and easyHub (office space) with what are obviously hyper-links in each case to what are presumably websites for those 6 enterprises.
60. There was a dispute about the date of this document. Mr Edenborough relied on it as being 2021, which is actually outside the relevant time period. Mr Aikens said there was no evidence of the date at all, which is true. I was not taken to a formal list of documents in which the document was dated, which could have given rise to the usual admission if the date was not challenged. Mr Edenborough sought to rely on an absence of a challenge to the trial bundle index when it was prepared, which showed the date. This is an unsatisfactory state of affairs, but I am prepared to assume that this is a 2021 document. That makes it outside the critical period. Although there are circumstances in which an out of period document could support a case of in-period use, as Mr Edenborough submitted, I do not consider that this is such an instance. It therefore fails to support Mr Edenborough’s case for that reason.
61. Were it not for the period point, I would have held that this web page was an instance of the provision of advertising services to licensees under the mark. Curiously, it was not positively demonstrated that all the businesses were run by licensees, but since 2006 a licensing model has been adopted, and the witness statement of Mr Miles incidentally established that at least easyHotel and easyGym (of the 6 identified on this webpage) were licensed business and his oral evidence incidentally added easyStorage. easyJet was also a licensee. Invoices in the bundle demonstrate that easyBus was a licensee too. This page is capable of amounting to the provision of advertising services - Easygroup has apparently arranged for the presentation of the advertisements - and it has done it under the banner of the easyGroup mark. The page also demonstrates use with promotional services, but not business information services. However, the services provided relate to licensees only, and not to the general business community outside the group.
62. Under this head Mr Edenborough also pointed to a similar but older page in which not only do some Easy brands appear, but there is also a non-Easy concern, Stelmar Tankers, with what is presumed to be a link to that concern. That page was relied on as showing the provision of advertising services to a non-licensee in case that made a difference. The short answer to this instance is that it is way outside the relevant period, because the page dates from 2004. It also looks as though Stelmar Tankers was another of Sir Stelios’s companies, and while it was not a licensee of an Easygroup brand it was hardly an outside third party for these purposes.

63. **Easymoney royalty payments to Easygroup 2016-2022.** These are proved by a series of ledger entries spanning this period and two invoices for royalty payments under a brand licence agreement. They prove nothing for present purposes. They do not demonstrate the provision or offer of any services, let alone the contested services under this head, and certainly not advertising or promotional activities. There is a payment for “Brand Protection”, but there is no evidence, as opposed to speculation, as to what that involved or whether the easyGroup mark was used in relation to it in a relevant way. Mr Edenborough invited me to treat these documents as part of the evidence to be assessed as a whole. I am not sure what the whole is said to be, but in my view they still contribute nothing useful for Mr Edenborough’s purpose. Such services as may (speculatively) have been provided fall within the unchallenged parts of the mark anyway (the unchallenged parts appear in Appendix 1).
64. **easyProperty management accounts entries March 2016.** In these management accounts (printed or produced on 20th April 2016 for the 6 months ended 31st March 2016) there is an entry for “Marketing Costs”, comprising “Marketing” of just over £3m for the year to date, and “Easygroup licences” in the sum of over £12,000. These are said by Mr Edenborough to demonstrated payments by easyProperty to Easygroup for marketing services provided by the latter. In my view they do not demonstrate that at all. The payee of the “Marketing” is not identified, much less that there was advertising or promotion done by Easygroup. Mr Edenborough went so far as to submit that these were secondary evidence of invoices presented by Easygroup, bearing its mark, which related to marketing. That is an impossible inference to draw. The licence payments do not clearly relate to the contested services either. Mr Edenborough drew attention to the fact that the licence costs were included under marketing and so must have related entirely to marketing. The entry is not sufficient to establish that that was an appropriate designation of the entry as relating to advertising, and again does not demonstrate use of the easyGroup mark in that connection. Mr Edenborough can derive no support from these entries.
65. **Money Week Article 18th November 2014.** This is an article about easyProperty “tak[ing] on high street agents by playing the trust card”. It refers to an interview given by easyProperty’s chief marketing officer. The first paragraph says: “EasyGroup has launched a £5m marketing campaign to back the launch of ... easyProperty.com”. Lower down it there is a reference to raising £9.75m, “half of which they have allocated to marketing in order to stand out among the intense competition...”. This does at least link some marketing activity with Easygroup, but it is no evidence of the use of its mark in connection therewith and there is no indication of what the services were. It is not apparent that easyProperty paid for them. Insofar as there might be that link the activities are comprised within the uncontested part of the specification. It is not an example of services provided to non-Easy group entities.

66. **Easybus invoices.** These are invoices raised by Easygroup to easyBus for royalties under (it is assumed) a licence agreement (though only one invoice says so). They in no way demonstrate the provision of any services, and again they are raised against a licensee not an outside third party. This does not support Mr Edenborough's wider advertising and promotional case at all.

67. **Easy.com website traffic figures 2005-2017 plus some webpages.** These figures simply show traffic to the easy.com website, which the defendants accept is operated by Easygroup. As such it is of no help. I was shown what were said to be some sample web pages. They are easy.com's pages which mention a number of Easy entities, including Easygroup, but they in no way relate to the provision of advertising services by Easygroup. This does not support Mr Edenborough's case at all.

68. **Museum of Brands, Notting Hill.** The relevant document looks like a webpage which shows the easy family (that is how it is described) at the Museum of Brands. It is a bit of self-advertisement for the family as a whole. Easygroup is not mentioned (as far as I can see from the poor print). It has nothing to do with the provision of advertising services by Easygroup under its brand to anyone, licensee or not.

69. **The easyJet in-flight magazine.** Easyjet produced and made available an in-flight magazine for passengers. These contained a lot of references to other Easy family companies, but Mr Edenborough in his written final submissions adverted (almost *en passant*) to the fact that they contained "copious advertising of completely unrelated third parties, and they refer to easyGroup". I was not taken to the detail of this, but the copy magazines in my papers did indeed contain third party (ie non-Easy family) advertising material. However, there is no indication that Easygroup had anything to do with this, whether or not the articles "refer to" Easygroup (whatever that may mean). Neither Mr Richardson nor Mr Anderson give any evidence about how third party advertising got into the magazine, and there is no evidence in this respect that advertising was somehow procured via the easyGroup mark (or even via Easygroup at all). There is therefore no evidence from this material that Easygroup itself had anything to do with these advertisements, whether under its marks or otherwise.

Non-use - the Easygroup marks-conclusion

70. I therefore find that in the relevant alleged period of non-use of the Easygroup marks the evidence shows minimal use of the mark in connection with the provision of such services, and it shows that insofar as there was the provision

of advertising or promotional services it was to licensees only, as in the uncontested part of the specification. “Business information services” were not the subject of any evidence, so there was no evidence that the mark was used in connection with these in relation to any entities. Standing back and looking at the evidence as a whole does not improve matters for Mr Edenborough. It therefore follows that the wider claim falls to be revoked for non-use. Since the narrower claim in the 415 mark is already in the specification it would seem to be unnecessary to carry out any amendments other than to strike out the wider version. No submissions were addressed as to whether the 160 mark can be or should be amended to effect a partial revocation and bring the marks into line with their actual licensee-related activities (if there were any), but all my findings apply to that mark as well so I would imagine that Mr Aikens would not oppose an appropriate partial, as opposed to a total, revocation.

Non-use - the easyMoney mark

71. There are two of these marks. The claim is one of non-use in relation to:

“credit card services; monetary affairs, banking services” (the 184 mark) to which “financial services” and “monetary affairs” are added under the 576 mark. “ISA’s” under the 184 mark is not challenged.

72. Mr Aikens’ view of the evidence is that it establishes that other than ISAs (which are an uncontested use) the easyMoney brand was used in connection with price comparison activities in the relevant 2014-2019 timeframe, and no more, and that those do not fall within the contested categories. Mr Edenborough said the evidence established relevant use within the period, while accepting that it changed across the period.

73. The evidence shows the following. First, Mr Richardson’s and Mr Anderson’s evidence does not deal with use within the period. They both demonstrated that historically easyMoney had a credit card offering but that ceased in 2006. While his witness statement refers to “a range of financial services ... provided under easyMoney including the provision of financial advice ...; and investment services” Mr Richardson accepted that by 2009 the offering under the easyMoney mark was essentially a price comparison website. No witness spoke to the activities in the alleged non-use period. Mr Edenborough has to have resort to documentary evidence for that. He relied on the following.

Web-page advertising an easyMoney discount card 2019.

74. This is a page inviting people to “Invest a minimum of £1,000 and become an easymoney plus member free”. The benefits are said to be savings of up to 50% at over 100 of Britain’s biggest retailers. It seems to be common ground that easyMoney had an ISA offering (a use of the mark under that part of the specification is not contested for that), and the reference to investing £1,000 would seem to be a reference to that. So this is a benefit which is an enticement to put money into an ISA. While this might just about qualify as “monetary affairs” (but not the other contested uses), it is in fact a promotional item which is a reward for the acquisition of another service, the ISA, and therefore not a qualifying use in line with what was said in this respect in *Merck* paragraph 114(4). Again, Mr Edenborough urged me to treat this as part of a greater whole. I shall bear it in mind for that purpose.

Various webpages 2016-2019

75. These pages showed the use of the mark variously in relation to:
- (i) Price comparison activity for energy saving, “digital switch solutions”, mortgages, bank accounts, credit cards and personal loans. It also offers “great financial advice” via various articles (not identified).
 - (ii) An advance notice of the coming of something within easyMoney.com which was “coming soon” for which members of the public were invited to register. It is not apparent what was “coming soon”.
 - (iii) A web page from 29th September 2017 announcing secured property lending and an ISA in the new year.
 - (iv) Website pages (many of which were reproduced in such a poor way as to make potentially significant print illegible) promoting an ISA which turns out to be peer-to-peer secured lending. Non-ISA lending is also promoted, and described as a “Regular Investment Account”. Mr Edenborough invited me to read that as a reference to a standard form of deposit account, but I do not consider that that is right. It would seem still to be peer-to-peer property backed lending, as is a reference to “Tax-Free Pension Investment Account”. It is surprising that Easygroup should present this material as to usage of the sign without a better understanding, and more legible evidence, of what the material relates to, but it is its choice as to what evidence to present.
76. I shall put on one side for the moment the extent to which these activities amount to financial services or monetary affairs. I prefer to accept Mr Edenborough’s invitation to consider the evidence in the round. What is clear, and what cannot be affected by the rest of the evidence, is that these activities do not amount to

banking services (or credit card services). An attentive average consumer would understand that there was no banking relationship. That is not the relationship that is described, and the adverts (or some of them) point out that the scheme is not within the FSCS scheme which operates for banks (that is a pointer, not determinative).

Easygroup ledger entries showing easyMoney royalty payments 2016-2022

77. As before, these do not demonstrate the use of the easyMoney mark in relation to anything. They merely record financial entries.

Licence agreement for the use of the easyMoney marks

78. I was shown one of these, dated 7th September 2016. It permitted the use of the marks for 50 years. Mr Edenborough pointed to the Licensed Activities:

“Licensed Activities’ means peer-to-peer lending, crowdfunding, lending and leasing (on terms that are economically equivalent to a financing transaction) funded by:(i) equity capital;(ii) peer to peer lenders (iii) funding lines (iv) Bonds, Securitisations, investment companies/trusts, ISAs and Funds.”

I do not think that this takes Mr Edenborough's case any further. What matters is not what the licensee was permitted to do, but what it actually did. What it actually did appears from the material referred to above.

2018 accounts of the easyMoney licensee under the agreement just referred to

79. Mr Edenborough relies on a statement in these accounts which describes the business of the company (E-Money Capital Ltd) as being “the provision of financial services”. That description does not necessarily take his case further. Again, what matters is what the company did and whether its use falls within the specified use for the mark. The company’s own description of its activities is of little or no significance.

Non-use - the easyMoney mark - conclusions

80. In sum, the nature of the use of the mark that has been established is use with a price comparison website for some products which can be classed as financial, and with an offering of some peer to peer lending, some of which is under tax-free wrappers (ISAs and pensions) and some of it not. That is as far as the activities go.
81. It is clear that none of this amounts to “credit card services” or “banking services”, even when taken all together. They are, I consider, capable of falling under the category of “monetary affairs” and “financial services”, because those are very broad categories, both simply lifted from the Nice classifications. Mr Aikens suggested that the use justified a fair specification which comprised “provision of a website comparing different comparable financial products and services” following the principles of *Merck*. That would seem to be somewhat narrow, but I agree that this sort of activity should be made to fall within a distinct sub-category of “financial services” because that overall category is capable of comprising a number of discrete categories which fall within *Merck* paragraph 246. I received no argument on this other than Mr Aikens’ suggestion, or on what other sub-category this activity could be made to fall into, but it would fall into a different category from, for example, advising consumers on pension or investment products, to take an example which would plainly be a sub-category whose existence demonstrates the possibility of breaking others out of “financial services”. The precise sub-category which might be defined will only matter if there is a possibility of ELA’s activities amounting to an infringing use, which, as will appear, there is not. In my view, and bearing in mind the nature of ELA’s activities, I do not consider that those activities are capable of falling within any reasonable description of category which describes easyMoney’s use, so for the moment further definition is unnecessary. It can be the subject of further debate after delivery of this judgment if necessary.
82. “Arranging and facilitating peer-to-peer lending” would seem to me to form an identifiable category within *Merck* principles, though again I received no argument on the point, probably because the parties did not seem to have identified that as an activity that was being carried on outside an ISA wrapper. I shall treat it as such for the time being. Again, ELA’s activities do not fall within any such use or variation of it, so precision at the moment is unnecessary.
83. The same applies to “monetary affairs”. This is potentially a very wide category which is capable of encompassing various activities which an average consumer would regard as being discrete activities. Financial advice is one; even banking might be another. The three uses to which the easyMoney mark has been

applied would be capable of falling within this broad category, but it would be wrong to hold that those limited uses count as use of the wider category when considering revocation. A narrowing is required in order to produce an appropriate category of use. Again, since it is impossible to imagine a narrowing which would catch anything that ELA did, I do not need to define that narrowing with any precision in this judgment.

Non-use - the Easy Networks mark

84. The uses which are challenged under this mark are the following:

“38. Communication of information by electronic means; Communication services over computer networks; Data communication services; Data transmission”.

The relevant non-use period which is relied on in this case is that appearing above, namely 10th February 2017 to 9th February 2022. However, as Mr Aikens correctly pointed out, on the facts I only have to consider the period from February 2017 to January 2019. That is because the mark was not apparently used at all after 29th January 2019. Up until that date the Easy Networks mark had been used by a non-Easy family company called Easy Networks Ltd of which Mr Gwilliam was the main shareholder. In 2017 Easygroup sued Easy Networks Ltd for infringing several “easy” marks (none involving the word “network”), and in 2019 that action was settled on the basis that the Easy Networks mark would be assigned to Easygroup and Easygroup would grant the company a licence to use a new “easy” mark, namely easyNetworks. That latter mark is not sued on in this action. Thereafter it would appear that the Easy Networks mark (in the form appearing in Appendix to this judgment) was no longer used - there is certainly nothing in the papers which suggested that it was, and it would have made no sense to use it when a new mark was created and licensed. So the only period for which use could be established ends in January 2019.

85. The evidence in support of the use came from the oral evidence of Mr Gwilliam and some websites and allied material. It had been the intention of Easygroup to adduce Mr Gwilliam’s evidence under the Civil Evidence Act by reference to a statement that was not specifically geared to the issue of usage of the Easy Networks mark because it had been prepared in 2019 under an agreement with Sir Stelios and was intended for other purposes. ELA then required his attendance for cross-examination and he was produced for that purpose. His statement stood as his evidence in chief. It described the activities of his company in various ways, and he confirmed his activities as being those falling within a description chosen by the claimant, namely network cabling services,

wireless network products and related services (including support and maintenance), installation and provision of telephone systems (including mobile handsets provided by third party manufacturers), mobile air time (provided by others, such as Orange), installation of call centre telephone systems and mobile telephone signal amplifiers and “virtual services” including call routing and broadband services. These last services would seem to involve arrangements to use networks and systems ultimately provided by others (such as BT Openreach). To those Mr Gwilliam added the provision of interactive whiteboards, projectors and televisions (or monitors), in his evidence. A large part of this seems to have involved the installation of hardware in order to transmit the data and signals provided by others, but some of it must be in the nature of software, such as the software which deals with call routing and phone system management.

86. Mr Edenborough also relied on documentary evidence which showed the following:

(i) Invoices from 2016, 2017 and 2018. The first of those is outside the period, and contains no relevant detail, so I can ignore it. The second is an invoice for “Service charges”, which are broken down overleaf to landline call charges, ADSL Broadband (including a line rental charge), “Fax to email rental” and “Ethernet” rental. The 2018 invoice is not broken down.

(ii) A webpage from what is probably 2018 (the date is lamentably unclear, as is much of the text) showing various services, corresponding basically to the general services described by Mr Gwilliam. Whether it contains any useful elaboration is not apparent from any print of the page available to me.

(iii) A webpage from 2018 which describes services in general terms which mainly look like hardware supply, though there is also “Fixed lines and calls”, “Numbers” and “Broadband”, which look more like “soft” services to go with hardware.

Mr Gwilliam did not elaborate on what underlay these documents and what further services they really demonstrated.

87. It is plain enough that the activities of Easy Networks fall within the unchallenged class 37 categories. Mr Aikens also accepts that “Internet access services” could also be said to be provided. That probably emerges from one of the invoices. The other services are much less clear. I received no submissions on how the evidence matched each of the services - Mr Edenborough seemed to treat it as obvious that the evidence supported the activities without analysis other than to say that they were provided as part of the network provision services or that they were necessary components of the networks, telecommunications and related support services provided by Easy

Networks. Those matters are not plain to me, and Mr Gwilliam did not elaborate on, or even clearly refer to, such services. Mr Edenborough observed that Mr Aikens did not put the contested services to Mr Gwilliam so that the latter's views on them and his activities could be ascertained. He is correct in saying that Mr Aikens did not do that, but that observation, if intended to support his own case, fails to take account of the burden of proof. The burden of establishing use lies on Easygroup, and it is Mr Edenborough who should have been seeking any elaboration which was required.

88. I have already observed that his statement was not really geared to the use points which arise in this case which doubtless explains the absence of elaboration from him. In the absence of express elaboration or assistance on the meaning of the categories I have to do the best I can, and I do so bearing in mind firmly where the burden of proof lies. Taking the contested services individually:

(i) "Communication of information by electronic means". This seems to me to describe the service provided, not just the physical means by which information is communicated. The physical means are comprised within Class 37. It is not apparent to me that Easy Networks provided this as a service, as opposed to providing the physical means (networks) to allow it to happen. I find that this use has not been established.

(ii) "Communication services over computer networks". Again, this describes the service, not the network. Bearing in mind the burden of proof, it is not apparent to me that this has been established. There is no doubt that Easy Networks installed networking equipment which would have facilitated the provision of such services, but services were not demonstrated.

(iii) "Data communications services". I consider that the internet access services which seem to have been provided fall under this category. In providing internet access Easy Networks was providing data communication services. There is no evidence that any other data communications services were supplied.

(iv) "Data transmission". It is not apparent what data Easy Networks transmitted as a service. I find this use to be not established.

89. It follows that the class 38 contested services should be revoked save for "Data communications services".

Non-use - the easyProperty mark

90. Under this head the defendants seek to challenge the registration under class 35 of “Advertising” and “advertising ... of auctioneering” as those words appear, but a question of construction arises which needs to be dealt with before moving on to consider questions of use.
91. Mr Edenborough said the word “auctioneering” stood without qualification so the specification meant what it said. Mr Aikens submitted that that word should be read as qualified by the words “real estate” so that it should be taken as being “advertising of real estate auctioneering”. I agree with Mr Aikens’ construction. The context of the word is “advertising of real estate sales, rentals, valuations and auctioneering”. The word “sales” is obviously qualified by the words “real estate” and it would be odd if the mark was limited in relation to sales but wide in relation to auctioneering. The natural meaning of the words taken together is that all the activities are qualified by the words “real estate” so as to be real estate-related activities. I shall approach the rest of this part of this judgment on the footing that Mr Aikens’ construction is correct.
92. I shall also proceed on the footing that “auctioneering” is a synonym for auctions. Mr Aikens accepted that and Mr Edenborough seems to have proceeded on the same footing in his detailed written submissions under this head. This may not matter much in the context of this case, but in case it does then I make it clear that that is the approach I shall adopt. Having said that, it does occur to me that the use of the word “auctioneering” does mean that the services of advertising the process is clearly directed at those providing the auctions (something which Mr Edenborough seems to have accepted - see below).
93. Against that background I turn to consider the use that is said to have been made of the mark, which involves a consideration of the nature of the underlying business. Mr Ellice and Mr Cooke gave oral evidence about this. The easyProperty mark was licensed to a company known as e-Prop Ltd, which was incorporated in 2012 and of which Mr Ellice was a director from 2012 until 2019. He described how the easyProperty business was conceived as an online estate agency business. I do not need to deal with most aspects of that business. His evidence was that in 2015 the company formed an intention to offer online property auctions and it started to offer them in 2016. They planned to make such an offering allied to a facility that they already had to exchange contracts online. That facility was provided by a separate entity trading under the name ClicktoPurchase.
94. However, the online auction offering was not a success. Mr Ellice was not able to be clear as to whether any sales were achieved through this route using ClicktoPurchase. There might have been one, but he was not sure. He did not

give any clear evidence as to how the easyProperty mark was used in connection with advertising all this, but I take from his evidence that the company did at least offer the online auction facility somehow.

95. E-Prop Ltd was not doing as well as had been hoped in 2016, so in 2017 it changed its business model. Its holding company (eProp Services Ltd) entered a merger with Mr Cooke's company, GPEA Ltd, a network of estate agents, which enabled it to sub-license the brand to a significant number of other agents who were members of the GPEA network and who wished to use it. At the time of the merger the provider of the auction product changed from ClicktoPurchase to IAM-SOLD Ltd who had previously provided auction services to GPEA. Mr Cooke's evidence in chief was:

“ ... Through that partnership, eProp Services plc began to advertise properties and offer property auction services at the following websites: <https://easyproperty.iamsold.co.uk> and <https://easyproperty/iamsold.co.uk/online-auctions>. The IAM-SOLD Ltd auction product was sold through www.easyproperty.com as 'easySpeed'. 'easySpeed' was the cheapest of the three fixed-price packs advertise to customers on www.easyproperty.com ...

8. We did not tend to use the word 'auction' because the concept of online auctions was fairly new. However, it was made clear during the customer journey that the customer would be entering into the modern method of auction we would also use phrases such as 'sell your house for free' to denote the option to sell a house by auction. Instead of referring explicitly to "auctions" in our TV advert, first aired in or around September 2017, we refer to the various options 'starting at £295'."

He went on to say that 31 properties were actually sold via auction between November 2017 and February 2019 (it turned out that the true number was probably 28 or 29, but the difference does not matter) though more properties than that would have been listed to be sold via auction but not sold that way. In March 2019 they marketed an auction option to licensees as a "no sale no fee" option.

96. He also explained that technically the person who provided the auction service to the vendor was IAM-SOLD Ltd. It is that company that entered into the

relevant contract with the vendor of the property. The auction might be conducted in one of two ways. It might have been conducted on a “white label” basis under which the online aspects were carried out through the estate agent’s website, making it look as though the estate agent was conducting it, or on IAM-SOLD’s own website. In either case the auction process was being conducted technically by IAM-SOLD.

97. One further aspect of this needs to be elaborated, namely what Mr Cooke meant by “modern method of auction”, because a question of construction arises out of that. The process conducted through the IAM-SOLD system involved a series of bids being made online with one bid eventually being successful. However, unlike a conventional auction a contract did not arise at the dropping of the notional hammer at the end of the process. Instead, the buyer paid a reservation fee and then had 56 days to exchange contracts, during which period the buyer would have to carry out all such due diligence as would be necessary or desired. The reservation fee was split between the estate agent who had arranged the matter and IAM-SOLD. A contract was exchanged in a more conventional way at the end of that period. This rather odd process left the buyer at risk of losing his or her reservation fee if the transaction did not proceed, but Mr Cooke’s evidence was that if the transaction did not proceed because of problems at the vendors end then very often the fee would be repaid.
98. Mr Aikens submitted that this process was not a proper auction and not within the meaning of that word (or “auctioneering”). I do not accept that submission. Although the evidence was lacking in granularity, as it was presented to me it portrayed the sale of real property arrived at by a sequence of (presumably) publicly declared escalating bids until the highest bid was reached and the winner was (in effect) declared as, and treated as, the purchaser. True it is that a contract was not reached at that stage, but it is fair to describe the process as an auction and I consider that the average consumer would understand it to be one. (There was no express evidence that there were publicly declared bids in the IAM-SOLD system, but there was evidence about that in ClicktoPurchase’s system, and no-one put, or suggested, that the absence of publicly declared bids was a difference between the “modern” and the “traditional” auctions, so I find that that element existed.)
99. I therefore find that the “auctions” that easyProperty was arranging were auctions within the meaning of the contested services, and that they related to real property. The question then becomes whether the mark was used in connection with the provision of “advertising of real estate auctioneering [or auctions]” with auctioneering understood in that sense.

100. In that context and at this stage it is important to recognise to whom the services are said by the claimant to have been provided under that mark. It was not clear what Mr Edenborough's case was on this point until his detailed final submissions on various of the items said to demonstrate the use. It turned out in his final submissions that his case is that the services are said to have been provided to ClicktoPurchase and to IAM-SOLD in respect of their provision of the auction function. In other words, it is said that the easyProperty mark was used to advertise their auction services and that easyProperty (or the entity using the mark) was providing those companies with a service in so doing. That is the use relied on.
101. Mr Aikens observed that that analysis only emerged in final submissions, and his cross-examination of Mr Ellice and Mr Cooke might well have been different if that had been made plain earlier. There is much to be said for this complaint, but in the end I do not think that prejudice has been caused because, as will appear, Mr Edenborough fails to establish his case on the evidence which did emerge.
102. The oral evidence to which I have referred is not a promising start for Mr Edenborough in this respect. The way in which the relationship between e-Prop Ltd on the one hand and the auction providers on the other worked does not look like one in which the Easy company was providing services to the auction providers at all. Rather, it looks as though the auction providers were providing a service to e-Prop Ltd, albeit in each case by entering into a contract with the vendor rather than with an Easy company. That is borne out by the contract with ClicktoPurchase (dated 12th August 2015). That contract is between Click to Purchase No 2 Ltd and e-Prop Ltd (trading as easyProperty.com) as "Customer". The Customer is defined as the "estate agent detailed in the Schedule who purchases Services from Click to Purchase Property" and "Services" is described as "the provision of online sales and electronic contract exchanges, tools to allow the Customer to list properties on the ClicktoPurchase website and to select the mode of sale. They may include private treaty or "Auctions" as further described on the website". Clause 3.2 contains an acknowledgment by the Customer that the services comprise "facilities for estate agents" and clause 5.1 provides for the Customer to elect for a given property to be sold by auction. The whole agreement is undoubtedly one in which it is ClicktoPurchase which is providing extensive services to e-Prop Ltd. I was not shown the contract with IAM-SOLD Ltd, but there is no reason to suppose it is any different.
103. There is thus no doubt that the provision of services went from the two auction providers to e-Prop Ltd, but the relevant question for these purposes is whether e-Prop Ltd (the effective user of the easyProperty mark) used the mark in relation to services provided to the two auction providers. It was not suggested that it was used in connection with services provided or offered more widely to

any other section of the auction (or auctioneering) market. Mr Edenborough submitted, and I accept, that services could have flowed both ways so that the easyProperty mark was being used in relation to services offered or provided to the auction enterprises, so the question is, did they?

104. There is no basis for such a finding in the oral evidence, so it is necessary to turn to the documentary evidence relied on. Mr Edenborough relied on 15 "Evidence examples" as supporting his case that the easyProperty mark was used in relation to the provision of services to the two auction companies. He relied on some of them individually and as part of an overall picture, and others as being part of the overall picture without necessarily demonstrating the use themselves, and he urged me not just to silo each document and consider it by itself, but also to put the evidence together.
105. I accede to that invitation, but however one approaches that documentary evidence there is no case at all for saying that e-Prop Ltd, or its licensor (if that is what is alleged) provided any services to the auction enterprises, let alone for saying that the easyProperty mark was used in relation to such services. I can deal with them all briefly as follows.

(i) Web page captured from archive 23 September 2017. This is a version of the webpage from which many graphics have obviously been omitted (but not all, apparently). The website seems to be that of easyproperty.com. There is no evidence of the use of the easyProperty logo which is the relevant mark for these purposes. Mr Edenborough invited me to infer that its use must be assumed. I am not prepared to draw that inference. He bears the burden of proof and he has not demonstrated use in this case. The website shows an offering of "easy" as one of various fixed-price packs offered by whoever was offering them, and it would seem that one of the things offered within easy is "The modern method of auction... online." There is also a reference to choosing easySpeed for "properties sold by auction... The modern method of auction". None of this would seem to have anything to do with the two auction enterprises. It is certainly not advertising their services, save insofar as easyProperty had, on the evidence, an intention to use one of them, undisclosed on this webpage. It is not easy to see how the provision of advertising services by advertising can take place without some reference to the recipient of the services (one or other of the auction providers), but even if one can imagine some such instances there is nothing to suggest that the offeror here is offering the services of anyone other than a company in the Easy group. It is doing what Mr Cook said happened, namely the offering of auction services under the name easy.

(ii) List of auctions undertaken by IAM-SOLD. This list appears

as a page listing them together with a "self-billed credit note" bearing the IAM-SOLD logo and apparently provided by IAM Sold. Mr Aikens attacks this evidence on the basis that the sales were few in number and small in value compared with the likely sales using other techniques. I do not think that that assists Mr Aikens, but what does assist him, and is determinative in his favour, is that there is absolutely no evidence here that any Easy company was providing services to IAM-SOLD. All it supports is use of IAM-SOLD to effect auction sales. That does not assist Mr Edenborough.

(iii) An easyProperty advert in the form of coloured pictures with text from 2022. The first point is that this is outside the relevant period so cannot help Mr Edenborough save insofar as it might support what went on in the period, which it does not. Furthermore, the material does not support his case anyway. It extols the virtues of easyProperty as being a good way to sell one's home and invites a choice between various packages including a full estate agency service. It also offers a range of "payment options" and asks the question "Are you looking for a speedy sale?". It says that if a speedy sale is sought then "easyProperty Auctions" might be suitable, and says a little about that. It extols the virtues of using the "modern method of auction". While this document can be said to be advertising the offering of an auction service, it plainly does not advertise anyone's service other than that of easyProperty. There is no reference at all to IAM-SOLD (who would have been the auctioneering company at the time); it makes it look as though it is easyProperty's services which are being sold.

(iv) easyProperty management accounts September 2017. These accounts contain a marketing figure but there is no indication of any costs attributable to advertising anyone's auctions and it certainly does not evidence the provision of payment to any particular person. I am invited to infer that a significant portion of the marketing costs would be related to auction advertising. I am not sure that I would infer that the auction advertising costs were "significant" but if it is suggested that those costs were moneys paid to IAM-SOLD then there is absolutely nothing to support that inference. This document does not help Mr Edenborough.

(v) Flyer addressed to a "Homeowner", 2017. This document is apparently something intended to be addressed to a homeowner whose property might be on the market. It does contain the easyProperty Mark (as part of a logo at the top) to which ".com" has been added and it invites the homeowner to consider using "Our £245 auction service". It extols the virtue of that service and invites the homeowner to find more about "our easyProperty Auction service." So far it presents the service as being offered by easyProperty. However, unlike any other of the public-facing documents relied on, this one does actually refer to IAM-SOLD. It claims that completion on average occurs within 47 days of the

auction ending, and against that there is a footnote which reads: "Statistics provided by IAM-SOLD (easyProperty's auction partner)...". That is all it says. Those words are incapable of amounting to a demonstration of the advertising of auction services provided by easyProperty to IAM-SOLD under the mark, or at all. It is merely a reference to some person with whom easyProperty apparently has some sort of commercial relationship.

(vi) Internal easyProperty email, copied to a GPEA person and with the subject "easyProperty auction November 2018". This internal email, bearing the easyProperty logo at the bottom, confirms that they have now agreed a no sale no fee product for "easyProperty auction". I fail to see how this can conceivably support Mr Edenborough's case.

(vii) Email 9th November 2018 from someone with a hotmail address to someone at Fine and Country, which was one of the trading names used by GPEA members. It relates to the difficulties in doing "this eP auctions page". While it has something to do with auctions, it has nothing to do with advertising services provided to any third party auctioneers at all.

(viii) What is described as an easyProperty direct marketing card from December 2018. It bears the easyProperty mark and invites the recipient to "Try our easyAuction package!". Mr Aikens observes that there is no evidence this was provided to anyone outside the organisation, and he is right about that but even if it was all it advertises is one of easyProperty's estate agency services and not those of the two auction providers. Mr Edenborough submits that whenever easyProperty is advertising auction services it is not advertising its own services but those of one or other of the two auction providers, and this proposition lies at the heart of his case in this area. The point fails on the facts. The two providers are never mentioned in the advertising (other than the one footnote reference to which I have referred) and it is not easy to see how there can be advertising without the beneficiary being mentioned.

(ix) 2019 email which seems to be making an announcement to licensees (that is a matter of inference from its text and the name of the recipient). It announces a "new website and a no sale no fee option" There is an easyProperty mark in a graphic at the start, accompanying a picture of someone, and there also a graphic of a laptop video presentation paused at the 31st second. Just visible on the screen is a reference to 4 possible services, the fourth of which is "easyProperty Auction" and reference to a sale by auction next to it. Once again this intended advert (there is no evidence it was deployed, but I assume for these purposes that it was) is of easyProperty's services, not those of anyone else. It completely fails to support Mr Edenborough's case.

(x) Ledger entries showing receipt of easyProperty royalty moneys. These are said to demonstrate the value of the easyProperty brand. They may do that; they do not show use of the easyProperty mark in relation to the contested services said to have been provided to the two auction providers.

(xi) Invoices from easyProperty to IAM-SOLD for moneys due in respect of various sales. They are in fact self-billing invoices bearing IAM-SOLD's logo, but purporting to be from "Easyproperty Head Office". There is no evidence of the source of the right to invoice. Mr Edenborough submits that these invoices relate to auctions conducted by IAM-SOLD "under the easyProperty mark" and therefore represent money owing to easyProperty for advertising. The "therefore" is misplaced in the absence of any indication that easyProperty was advertising IAM-SOLD in relation to those sales, which there is not.

(xii) Daily Telegraph announcement of the easyProperty/GPEA merger, 2017. This does not provide any useful evidence of anything relevant to this case. It is purely about the merger and its benefits to the participants, and not about auctions at all.

(xiii) Some sort of online announcement under the heading of express.co.uk of a three bedroom property in Liverpool and how it can be secured via the Modern Method of Auction, explaining what are said to be the benefits of that technique with that explanation said to be derived from the easyProperty website. If this advertises anyone's auction-related services it is easyProperty's and certainly not those entities providing easyProperty with auction services.

(xiv) Article in the Hampshire Chronicle 28th October 2019. This announces that a local entrepreneur has joined forces with Sir Stelios to launch easyProperty. Leaving aside the fact that this is out of the date range and is, in the short description just given, of doubtful factual accuracy, it makes no mention of anyone's auctions.

(xv) Press article 10th December 2019. Again this article is out of the date range, but I shall ignore that for these purposes. It refers to a "relaunch" of the easyProperty brand. It makes no mention of auctions.

106. By way of summary, therefore, that material either does not relate to auctions at all, or it refers to participation in auctions as being something provided by easyProperty to customers. Only one document refers to the auction providers, and they cannot conceivably be said to be advertised in any of these documents, and none of the documents contain secondary evidence of such services being provided. That is not surprising in the light of the oral evidence and the ClicktoPurchase contract, from which one can plainly infer that the services

were all one way, from the auction providers to easyProperty. The position is not improved by taking all the evidence as a whole. The whole is no better than the sum of the parts, which is zero.

107. So far as the wider use of “Advertising” is concerned, there is no evidence to support any use of the mark in connection with “Advertising” in connection with any activity other than real estate sales. In accordance with the principles in *Merck* it is possible and right to treat that as a separate sub-category which does not justify the wider category. Since the only advertising falls within the unrevoked parts of the sub-categories to which it is applied it is right to revoke the plain reference to “Advertising”.
108. It follows that the relevant period of non-use has been established in relation to the challenged category of use and the mark stands to be partially revoked in relation to those advertising services and in relation to the generalised category of “Advertising”.

Revocation – summary of conclusions

109. I therefore find that all the contested services within the marks fall to be revoked apart from “Data communications services” under the Easy Networks mark.

Infringement - general and the target activities

110. My conclusions on revocation in theory significantly limit the scope of the infringement claims under section 10(2) because the limits imposed by revocation mean that in some instances there is nothing to measure the infringing activities against. However, there is a residual category of use to be considered in relation to the Easy Networks mark, and in any event I received submissions on the issue and in case this matter should go further on revocation I will set out some findings on infringement on the assumption that I am wrong on the revocation claim.
111. The target activities of ELA that are said variously to infringe were divided by Mr Edenborough into the following categories with the following labels:
- (i) The “Platform Services”. These are said to be the provision of online platform services whereby auction houses can broadcast their chattel auctions to consumers in real time, and consumers are able to bid on auctions run by such auction houses in real-time. As already indicated, these take two forms. The first allows an auction house to use the platform under its own name (the “white label” arrangement) in which the software is provided but ELA’s brand does not appear in the customer-facing

presentation online. The other is the provision of a market place, or online shop window, in which an ELA-branded site provides a shop window to forthcoming chattel auctions and links that a customer can click on to get to the auctioneer's catalogue and to register for bidding. If the former is clicked one goes through to the catalogue and then one can click through to get details of individual items and see a bidding button. Although the auctioneer is indicated at these stages, the ELA logo still seems to appear in the form of a banner.

(ii) The "Advertising Services". These are described as advertising auction houses and auctions. This plainly occurs on ELA's website.

(iii) The "Information Services". These are described as publishing auction catalogues and auction event details online and informing bidders of auctions online and by email. This is a more or less accurate description of what happens, though one needs to be careful about the word "publishing" in relation to catalogues. What ELA does is provide an indication of the future occurrence of an auction and a link to the catalogue. It does not write the catalogue - the auctioneer does that and has it on its own systems, but ELA does mirror it on its own systems, so electronically it resides there and that is the version that a customer will see.

(iv) The "Payment Services". These are described as the provision of payment facilities for use of the platform to auction houses and bidders. Once more, these matters occur, but Mr Aikens disputes whether they should be regarded as a separate service.

112. Mr Aikens accepts that the Platform Services were provided and can be identified as a separate service, but he says that the other three services are not supplied as free standing services. Rather, they are part of the Platform Services. He particularly disputes that what ELA does amounts to the provision of advertising services. It will be necessary to decide whether that analysis is correct because in due course it will be necessary to measure what ELA does against services for which the relevant marks are registered. It will be more convenient to deal with that when I deal with the similarity of services below. For the moment I will observe that what is important is substance and reality, and not labels. It is not a coincidence that Mr Edenborough has broken down what ELA are said to do into categories with labels that can be seen to coincide with the wording of the relevant classes of mark. I shall not be misled by convenient labelling.
113. When it comes to comparing ELA's services with the claimant's marks, Mr Edenborough relied on the table in Appendix 3. I shall return to it.

Infringement requirements generally - section 10(2)

114. As part of the agreed law the parties agreed that the following summary, contained in the judgment of Arnold LJ in *Liverpool Gin Distillery v Sazerac Brands* [2018] FSR 15 (with some references to authority omitted where the omission does not damage the sense of the extract):

“7. In order to establish infringement under art.9(2)(b) of the Regulation/art.10(2)(b) of the Directive, six conditions must be satisfied: (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. In the present case, there is no issue as to conditions (i)-(v).

8. The manner in which the requirement of a likelihood of confusion in art.9(2)(b) of the Regulation and art.10(2)(b) of the Directive, and the corresponding provisions concerning relative grounds of objection to registration in both the Directive and the Regulation, should be interpreted and applied has been considered by the Court of Justice of the EU in a large number of decisions. The Trade Marks Registry has adopted a standard summary of the principles established by these authorities for use in the registration context. The current version of this summary, which was approved by this court in *Comic Enterprises Ltd v Twentieth Century Fox Film Corp* [2016] EWCA Civ 41; [2016] F.S.R. 30 at [31]-[32] (Kitchin LJ), is 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;

(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.”

9. The same principles are applicable when considering infringement, although it is necessary for this purpose to consider the actual use of the sign complained of in the context in which the sign has been used: ... As Kitchin LJ (with whom Sir John Thomas PQBD and Black LJ agreed) put it in *Specsavers International Healthcare Ltd v Asda Stores Ltd* [2012] EWCA Civ 24; [2012] F.S.R. 19 at [87]:

“In my judgment the general position is now clear. In assessing the likelihood of confusion arising from the use of a sign the court must consider the matter from the perspective of the average consumer of the goods or services in question and must take into account all the circumstances of that use that are likely to operate in that average consumer’s mind in considering the sign and the impression it is likely to make on him. The sign is not to be considered stripped of its context.”

10. It is well-established that there are two main kinds of confusion which trade mark law aims to protect a trade mark proprietor against (see in particular *Sabel BV v Puma AG* (C-251/95) [1997] E.C.R. I-6191 at [16]). The first, often described as “direct confusion”, is where consumers mistake the sign complained of for the trade mark. The second, often described as “indirect confusion”, is where the consumers do not mistake the sign for the trade mark, but believe that goods or services denoted by the sign come from the same undertaking as goods or services denoted by the trade mark or from an undertaking which is economically linked to the undertaking responsible for goods or services denoted by the trade mark.

11. In *LA Sugar Ltd v Back Beat Inc* (O/375/10) Iain Purvis QC sitting as the Appointed Person said:

“16. Although direct confusion and indirect confusion both involve mistakes on the part of

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

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

(a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right (‘26 RED TESCO’ would no doubt be such a case).

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as ‘LITE’, ‘EXPRESS’, ‘WORLDWIDE’, ‘MINI’ etc.).

(c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension (‘FAT FACE’ to ‘BRAT FACE’ for example).”

12. This is a helpful explanation of the concept of indirect confusion, which has frequently been cited subsequently, but as Mr Purvis made clear it was not intended to be an exhaustive definition. For example, one category of

indirect confusion which is not mentioned is where the sign complained of incorporates the trade mark (or a similar sign) in such a way as to lead consumers to believe that the goods or services have been co-branded and thus that there is an economic link between the proprietor of the sign and the proprietor of the trade mark (such as through merger, acquisition or licensing).”

115. I also adopt the useful summary of Kitchin J in *Comic Enterprises v Twentieth Century Fox* [2016] EWCA Civ 41; [2016] ECC 24 at [79]:

The question in every case remains the same, namely whether, having regard to a notional and fair use of the mark in relation to all of the goods or services for which it is registered and the actual use of the sign, there is a risk that the average consumer might think that the goods or services come from the same undertaking or economically linked undertakings, and that is all.

116. So far as the interpretation of a specification and comparing goods and services is concerned, the following were agreed as the applicable principles, based on Arnold LJ’s judgment in *Sky plc v Skykick UK Ltd* [2020] EWHC 990 at para 56:

(a) General terms (including the general indications of class heading of the Nice Classification) are to be interpreted as covering the goods or services clearly covered by the literal meaning of the terms, and not other goods or services.

(b) In the case of services, the terms used should not be interpreted widely, but confined to the core of the possible meanings attributable to the terms.

(c) An unclear or imprecise term should be narrowly interpreted as extending only to such goods or services as it clearly covers.

(d) A term which cannot be interpreted is to be disregarded.

117. Kitchin LJ in *Comic Enterprises* at §30 acknowledged that:

“the matters to be taken into account in assessing similarity were explained by the Court of Justice in *Canon Kabushiki Kaisha v Metro Goldwyn Mayer Inc* (C-39/97) EU:C:1998:442; [1999] F.S.R. 332; [1999] R.P.C. 117 at [23] (as corrected):

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

Infringement - relevant date of assessment and limitation – the principles

118. There is a dispute as to the date on which infringement should be assessed. It is not apparent to me that, as the case developed, much turned on this, but in case that is wrong I will deal with it.

119. Mr Edenborough says that the date of assessment is either the date of first use of the infringing mark, or, if that use took place outside the limitation period applicable to the claim, the first day within the limitation period (or the day before that, which is highly unlikely to generate a different result from taking the first day). To this there is an added gloss, which is that use of a sign in a materially different manner or context requires a new global assessment as at the date of that change of use. There is a further gloss where, as in the present case, a claim is added by amendment (as in the case of the easyProperty mark in the present case) - one looks back to 6 years before the date of amendment. Mr Edenborough says he is entitled to have the assessment as at that date, and not at some earlier date even if the first infringing act took place at that earlier date. As I understand it this is said to follow from the way in which one approaches the situation where the limitation period has intervened, as referred to earlier in this paragraph.

120. Mr Aikens' case is that in all cases the proper date for assessment is the date of first use of the infringing sign, save where there has been a materially different use subsequently in which case he agrees with Mr Edenborough that there has to be a fresh assessment as at the date of the change of use. If, contrary to his case, one assesses infringement by reference to a limitation period, then in the case of a claim added by amendment one calculates the limitation period by reference to the date of the claim form on the relation back principle, and not from the date of the amendment. That, if correct, would make it more difficult for a proprietor to rely on later developments of the reputation of its mark.
121. As a matter of principle and logic it seems to me that Mr Aikens is correct. An infringement by an allegedly infringing mark has to be assessed when it is first used, and, as Mr Edenborough accepted in terms in his oral final submissions, it is not later rendered infringing as the reputation of the registered mark increases. If the original use of the challenged mark remains the same there is no reason to move the date of assessment, and it would be contrary to principle to move it to a later date at which the result might be different because of the development of the registered mark. If the use changes then, of course, the position is different and one re-assesses at the date of the material change. All that is logical, and the "first use" date is what was originally pleaded as the relevant date in the claimant's Particulars of Claim.
122. However, Mr Edenborough says that authority has now developed that position. He relied on *Easygroup Ltd v Nuclei Ltd* [2022] ETMR 31 in which Bacon J seems to have assumed that the relevant date of assessment was the start of the limitation period in a case in which there was pre-limitation use. She did not propound any reasoning for her approach; she merely stated she was following Arnold J in *Walton International v Verweij Fashion* [2018] EWHC 1608 at para 95 (see her paragraph 295). In that paragraph in *Walton* Arnold J said:
- "95. The question whether the use of a sign infringes a trade mark pursuant to Article 10(2)(a),(b) of the Directive or Article 9(2)(a),(b) of the Regulation falls to be assessed as at the date that the use of the sign was commenced: see Case C-145/05 *Levi Strauss & Co v Casucci SpA* [2006] ECR I-3703. Where the use of the sign commenced more than six years (i.e. the limitation period) before the claim form, then the relevant date is six years before the date of the claim form: see *Stichting BDO v BDO Unibank Inc* [2013] EWHC 418 (Ch), [2013] ETMR 31 at [98]."
123. Mr Aikens submitted that Arnold J's reliance on the *BDO* case (which was his own decision) was misplaced because it did not actually say what Arnold J

described. What the relevant paragraph (and the preceding paragraph, which is necessary for context) said is:

“97. Turning to the infringement allegations in the present case, counsel for the Defendants submitted that the correct approach was as follows:

i) In the case of the Claimants' claim in respect of Unibank's advertisements, these should be treated as separate alleged infringing acts and judged as at the date of each advertisement.

ii) In the case of the Claimants' case in respect of the Defendants' remittance businesses, the Court should consider the position as at the date each of the Second to Fifth Defendants started its use of the sign BDO Remit, namely 2004, 2007, 2007 and 2006 respectively.

iii) In so far as any of the alleged infringements date from prior to 10 December 2007, partial revocation of the Trade Mark with effect from that date does not provide a defence; but in so far as the alleged infringements continue after that date, the Court should if necessary re-assess the position taking the partial revocation into account.

98. I accept these submissions, subject to one small qualification. The qualification is that infringements prior to 17 May 2005 (six years before the Claim Form was issued) are barred by limitation in any event.”

124. I agree with Mr Aikens on this point and would respectfully depart from what Arnold J said in *Walton and Bacon J's* following him. An analysis which shifts the date of assessment to a date just inside the limitation period seems to me to be illogical if one starts from the proposition (which is not disputed as a starting point) that the dates for assessment of infringement and for passing off are the same, that is to say the date of the first use of the infringing sign (absent any subsequent material change of use). There is no process of periodic (or any) re-assessment thereafter within trade mark or passing off law (absent a materially different sign). A continued use of the infringing sign will continue to be an infringement, but the assessment will already have been made. The registered proprietor of the mark cannot move the goalposts during this period by improving the case on, for example, the reputation or distinctiveness of the mark, as Mr Edenborough fairly conceded. The intervention of a limitation period does not affect this logic. What it does is limit the period of time for which the remedy can be obtained. It does not (on well-established principles) extinguish the previous breach and require one to start again; it bars the infringements which can be relied on in the action.

125. In my view paragraph 98 of the *BDO* case makes that sort of observation about limitation. It does not say that the assessment has to be re-done at the beginning of the limitation period. It is therefore no authority for the proposition which Arnold J later attributed to it, and it is not apparent that there was any argument about it in *Walton*. Bacon J then followed that later decision of Arnold J, again apparently without argument.
126. I therefore (with all due respect to the two previous judges who have adverted to the point) conclude that the date for assessment is the first use of the allegedly infringing sign (absent, as I have said, some change in use which requires a re-assessment).
127. This conclusion robs the other related dispute in this area of much of its potential significance. Mr Edenborough contended that the limitation period for the easyProperty mark was calculated as 6 years before the amendment; Mr Aikens said it related back to the date of the claim form. If Mr Edenborough were right, and if he were right about the assessment date being the beginning of that period, he would have the benefit of a later date than if the limitation period counted back from the date of the claim form (Mr Aikens' case). That might assist his case. However, since I have held that the limitation period is irrelevant for assessment date purposes that particular dispute does not matter in that context. Nonetheless, since limitation is a pleaded defence I should deal with it in that context.
128. The short answer to the point lies in section 35 of the Limitation Act 1980:
- “”
- “35. For the purposes of this Act, any new claim made in the course of any action shall be deemed to be a separate action and to have been commenced –
- ... (b) in the case of any other new claim, on the same date as the original action.”

For limitation purposes, therefore, the limitation period counts back from the date of the issue of the claim form, that is to say 2013. It is not obvious to me what significance that has for the other issues that I have to decide in this action, particularly since I am not asked to assess any damages.

The average consumer

129. At various points in any trade mark infringement case the “average consumer” makes an appearance. He/she has already appeared in the context of the revocation claim argument. There have been various formulations in the cases as to the attributes of such a person, and there was no dispute in the present case as to what the relevant attributes were. I can set them out with only limited reference to authority:

(i) “18....the average consumer for the purposes of an infringement claim must be a consumer of the goods and/or services who is both (i) familiar with the trade mark and (ii) exposed to, and likely to rely upon, the sign ...The average consumer is determined by reference to the goods and services for which the trade mark is registered, not by reference to the quirks of any individual defendant's business” (per Douglas Campbell QC in *easyGroup Ltd v Easyway SBH* [2021] EWHC 2007 (IPEC).”

(ii) The level of attention and care to be paid is significant. The level of attention displayed by the average consumer is likely to vary depending on the nature of the goods or services and how they are acquired. Thus, for example (and pertinent to this case) a professional acquiring services or goods can be expected to pay more attention than a layman in a shop.”

130. It seems to have been accepted in this case (and in any case I find) that there are two types of average consumer or relevant public, depending on the marks and services in issue - managers of auction houses, and those bidding or considering bidding in auctions. The former have some of the attributes of a professional and fall to be treated as such, and therefore are notionally expected to pay more attention than a lay consumer. The latter are general members of the public interested in auctions and the subject of chattel auctions. The average bid in three months in 2020 has been said to be about £250, which reflects the fact that bidders include non-specialist members of the general public.

Enhanced and low distinctiveness

131. The parties relied on matters of enhanced and low distinctiveness at various stages of their cases. The principles, which I shall apply at the relevant points of this judgment, are as follows.
132. When it comes to questions of confusion, or related issues of linkage under section 10(3) of the 1994 Act, Mr Aikens relies on the claimants' marks as being of low distinctiveness so far as the element "easy" is relied on, and pointed to *Whyte and Mackay v Origin Wine* [2015] EWHC 1271 (Ch); [2015] FSR 33. At paragraph 44 Arnold J summarised the point in the following short terms:

"45 ... It is not necessary for present purposes to go further into [certain questions arising out of the authorities], for what can be said with confidence is that, if the only similarity between the respective marks is a common element which has low distinctiveness, that points against there being a likelihood of confusion."

I shall take that into account, bearing in mind the important word "easy", which is inherently such an element.

133. For his part Mr Edenborough sought to enhance his case by relying on what he said was the enhanced distinctiveness of his marks arising out of the use of the word "easy" across the group and across time, which in turn was said to increase the risk of confusion - see the *Liverpool Gin Distillery* case at paragraph 8(h), above. I accept this proposition. This point is also capable of going to some of the questions which arise under section 10(3).
134. The application of those principles to the facts will appear below.

Family of marks - principles

135. This is a point capable of bearing on issues of confusion and links (under infringement) and misrepresentation (under passing off). Where a proprietor establishes that there is a family of marks, and the challenged sign reproduces some of the elements of the "family", then the possibility of confusion is enhanced. The principle, and how it works, was set out in *W3 Ltd v easyGroup Ltd* [2018] EWHC 7 (Ch):

“234. Family of marks. Where it is shown that the trade mark proprietor has used a “family” of trade marks with a common feature, and a third party uses a sign which shares that common feature, this can support the existence of a likelihood of confusion. As the Court of First Instance (as it then was) explained in *Case T-287/06 Miguel Torres v Office for Harmonisation in the Internal Market* [2008] ECR II-3817:

“79. As regards the applicant’s argument that its earlier marks constitute a ‘family of marks’ or a ‘series of marks’, which can increase the likelihood of confusion with the mark applied for, such a possibility was recognised in *BAINBRIDGE* and confirmed in *Case C-234/06 P Il Ponte Finanziaria* [2007] ECR I-7333.

80. According to that case-law, there can be said to be a ‘series’ or a ‘family’ of marks when either those earlier marks reproduce in full the same distinctive element with the addition of a graphic or word element differentiating them from one another, or when they are characterised by the repetition of the same prefix or suffix taken from an original mark (*BAINBRIDGE*, paragraph 123). In such circumstances, a likelihood of confusion may be created by the possibility of association between the trade mark applied for and the earlier marks forming part of the series where the trade mark applied for displays such similarities to those marks as might lead the consumer to believe that it forms part of that same series and therefore that the goods covered by it have the same commercial origin as those covered by the earlier marks, or a related origin. Such a likelihood of association between the trade mark applied for and the earlier marks in a series, which could give rise to confusion as to the commercial origin of the goods identified by the signs at issue, may exist even where the comparison between the trade mark applied for and the earlier marks, each taken individually, does not prove the existence of a likelihood of direct confusion (*BAINBRIDGE*, paragraph 124). When there is a ‘family’ or a ‘series’ of trade marks, the likelihood of confusion results more specifically from the possibility that the consumer may be mistaken as to the provenance or origin of goods or services covered by the trademark applied for and considers erroneously that that trade mark is part of that family

or series of marks (Il Ponte Finanziaria paragraph 63).”

81. However, according to the above case-law, the likelihood of confusion attaching to the existence of a family of earlier marks can be pleaded only if both of two conditions are satisfied. First, the earlier marks forming part of the 'family' or 'series' must be present on the market. Secondly, the trade mark applied for must not only be similar to the marks belonging to the series, but also display characteristics capable of associating it with the series. That might not be the case, for example, where the element common to the earlier serial marks is used in the trade mark applied for either in a different position from that in which it usually appears in the marks belonging to the series or with a different semantic content (BAINBRIDGE, paragraphs 125 to 127). ”

136. Those principles were not challenged by Mr Aikens, nor did he dispute the existence of a family, but as will appear he said the family was perhaps smaller than Mr Edenborough said it was and he challenged the fulfillment of the criteria in paragraph 81.

The date of assessment of infringement under in this case

137. I now need to turn to the appropriate date or dates of assessment of infringement in this case, in case the point matters on the facts.
138. I have already determined the principles for determining the date of assessment. In accordance with those principles I have to decide when the first date of the use of the allegedly infringing signs were, and whether any material change in use requires a later assessment date.
139. The precise date of first use of each sign was a matter of dispute of detail, but Mr Edenborough was sensibly prepared to accept the defendant’s version of these dates because any detailed difference does not make a difference in relation to any issues to which it is relevant. Those dates appear in the table in

Annex 2 to this judgment. So far as relevant I will therefore take the dates as those appearing in the last column of that table.

140. The first date for the first sign is therefore January 2010. That is the first date of assessment. Mr Edenborough then maintains that there was a material change each time the logo changed as shown in the table, so that a new date of assessment applies to each sign.
141. I was not shown authority on how changes of sign fall to be treated in this context, but it seems to me that the real question is whether essentially the sign has changed in the eyes of the average consumer or whether it is essentially the same sign. I consider that there was a material change between Signs 1 and 2A. The introduction of the lower case italicised and emboldened word “easy”, and the slight closing up of the spacing between words, gives a different impression and would be regarded as a different sign by the average consumer. Although the dates mean that the difference will have little or no effect in this case I nonetheless make that finding. In practice I can take 2010 as the first date of assessment.
142. I find that there is no material difference between Signs 2A and 2B. The only actual difference is the removal of the ® mark and the smaller text for “.com”. The first is not striking, and indeed is hardly noticeable. I do not consider that the average consumer would notice it, let alone come to the conclusion that second sign was different from the first. Nor is the smaller text for “.com” a significant change in this context. There is therefore no new assessment date arising out of that change.
143. The difference between Signs 2B and 3 is the removal of the hammer (or gavel) from the sign. Mr Burnside’s explanation of that was that the hammer did not look good when condensed into some banners on web pages. I have some difficulty in accepting that explanation but in any event I consider it does produce a materially different sign in the eyes of the average consumer. The removal of the hammer emphasises the text and creates a materially different impression.
144. Sign 4 again amounts to a new sign which is materially different and which requires a further assessment. The fonts have changed, and the emphasis which the emboldening of “easy” gave has gone and has shifted to the word “Auction”. The de-capitalising of the “L” in “live” is also a significant part of the picture. Looked at through the eyes of the average consumer, it would be viewed as a new sign, requiring a fresh assessment.

145. It follows that there are three assessment dates, one - 2010 for Signs 1 and 2, 2016 for Sign 3 and March 2019 for Sign 4.

Family of marks - the size of the family

146. Some of the history of the easy group of companies is referred to above in the incorporated reference to the *W3* case. At paragraph 282 of that case Arnold J accepted a degree of reliance on family branding:

“282. Thirdly, I consider that by June 2009 easyGroup was in a position to rely at least to some extent upon a family of trade marks. Moreover, by this time it had been making some attempt to educate the public as to the existence of that family.”

Mr Aikens expressly accepted that conclusion but maintained that the family of marks had only gained any significant public recognition in the travel and related sectors. That is capable of limiting the effect of the “family” argument, and Mr Edenborough maintained that the marks had a wider appreciation than that. It is therefore necessary for me to consider whether Mr Edenborough has done any better than that in establishing a wider recognition because it might go to an enhanced likelihood of confusion - how big was the family? This may not be of much significance in the light of the way this case develops in this judgment, but I received argument on it and will consider it in case it does matter.

147. The marks which are relied on by the claimant under this head are the registered marks, plus the following:

EASYEVERYTHING, EASYINTERNETCAFE,
EASYRENTACAR, EASYCAR, EASYHOTEL,
easyLand, easyKiosk, easyRider, easyRamp, easyTech,
and easy.com.

148. In theory the dates at which I have to consider that question are the three assessment dates - 2010, 2016 and 2019. However, it was not suggested that the family had grown or shrunk across those dates, and since (as will appear) 2010 is the most significant of those dates I shall consider the position as at that date.

149. Mr Aikens submitted that for a mark to form part of the relevant family it had to be on the market at the date of the assessment of infringement, relying on paragraph 81 of the *Miguel Torres* extracted by Arnold J in *W3* . He sought to point out that most of the marks just referred to had ceased to be used in relation to goods or services some years before the first of the assessment dates, let alone the later ones, presumably in an attempt to limit the scope of the family and its impact on confusion and allied concepts. I reject that argument as an absolute requirement. The authority might be thought to be saying that, but I do not consider it really is. It is making the point that a mark that is not used in the market cannot be part of a family which leads to confusion because it was never known as part of the family. It is only those parts of the family that are on the market that can give rise to confusion. That is entirely logical when thus stated. If that is right then one does not exclude a mark merely because it had ceased to be on the market before the assessment date. The perception of the family by the average consumer may still be affected by a recently retired mark if it is likely to be still in his/her mind. This point is not a technical one; it is an evidential one about the sort of things that play in the mind of the average consumer. Of course, if a mark has been retired for some considerable time it will not, as a matter of fact, be likely to be playing on the mind of the consumer, but again that is a sort of evidential point, not a technical point.
150. Accordingly the fact that some of the additional marks had not been used for some time (easyInternetcafe/easyEverything, which were the same thing, since 2007; easyKiosk since about 2007; easyRider since 2002; easyRamp 1999, allegedly, and easyTech since 1999) and were not present on the market in 2010 does not automatically exclude them from the family. Having said that, the impact of most of the additional marks on this point is not at all great because of the length of time since they were last apparent to the market. Most of them were already taken into account by Arnold J in his accepted views on the family - all except easyRamp. Several are apparently not customer facing (easyRamp and easyTech at least). Most of them are travel related anyway (all except easyLand, which is an office address and not a mark, and EASYEVERYTHING/EASYINTERNETCAFE which were different brands for the same enterprise). Accordingly, those additional marks do not materially expand the matter beyond Arnold J's accepted determination. Press coverage referred to in Mr Edenborough's skeleton argument would tend to support the prevalence of other easy+ brands within the Easy group even if not specifically relied on by Mr Edenborough (and even if not marks). That, and the availability of the easyMoney mark in this part of the case demonstrate a family presence going a little beyond travel and related activities. To that extent they enhance the availability of the family of marks point at this level of the argument but not significantly for the purposes of this action.

Infringement - the elements in this case

151. I can now turn to the question of infringement in this case, applying the more general matters that I have dealt with above. I shall use the elements of Arnold LJ's judgment in the *Liverpool Gin* case as a useful road map. Although they are set out above, I shall repeat the route here:

- (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.

It is common ground that factors (i) to (iii) are fulfilled, so I can start with factor (iv).

Are the defendant's signs similar to the claimant's marks?

152. Mr Aikens accepted that there was "some" visual, aural and conceptual similarity between the marks, because "Easy" was a common element, and in that sense there was no dispute between the parties under this head. Mr Edenborough did not contend for anything much more than a moderate similarity. The dispute between the parties is therefore a limited one of degree. I consider that there is a very low level of similarity between the Easy marks and Sign 1. There is a greater degree of similarity between Sign 2 on the one hand and the Easygroup, easyMoney and easyProperty marks on the other because of the font used for "easy" in the signs, the lower case "e" and the closing up of the letters. I assess that degree of similarity to be no more than moderate.

153. There is very little similarity between the Easy Networks mark and ELA's signs because the former uses a different font and presentation from the other Easy marks. The only similarity is a very low one from the use of the word "easy" followed by the name of a service, but not elided into one word.

154. There is also a much lower degree of similarity as between the easyGroup, easyMoney and easyProperty marks on the one hand and Sign 4 on the other, because of the removal of the emboldening from the "easy" element and it shifting to "Auction".

155. So far as the word only marks are concerned, there is a similarity of a low level born of the use of the word “EASY”, plus a service. The similarity is slightly higher in the case of the version with elided words.

Similarity of services - general

156. Mr Edenborough’s case on this is set out in the table which again it is more convenient to set out in a separate Appendix, namely Appendix 3. Even though some of the similarities do not arise bearing in mind the revocations which I have found to be appropriate, I shall make some findings on at least some of them. However, before doing so I need to deal with a submission of Mr Aikens as to whether it is right to treat Advertising, Information and Payment Services as separate services at all for the purposes of this comparison.
157. Mr Aikens submitted that that was not the right approach. He submitted that all three of those services were not free-standing services but were all provided as part of the Platform Services where they were provided at all. They were functions provided only to auction houses whose auctions were broadcast on the ELA platform, or to potential and actual bidders.
158. I do not agree with that analysis, or at least not completely. As I have observed, it is important not to be misled by labels, and particularly labels chosen by one party or another apparently chosen to bring what is described close to a particular class of use. It is important to look at substance, not labels. I will therefore consider the activities identified by Mr Edenborough and consider whether they are indeed a particular activity which can be seen to amount, in substance, to a sufficiently discrete activity so as to amount to the provision of a service within a trade mark categorisation. If they do then it matters not that they were provided under some form of umbrella arrangement which included different matters. I shall consider them service by service.
159. Before turning to the question of the services, Mr Aikens took a pleading point in relation to an absence of a pleading of similarity (as opposed to identicalness) of certain services. He may be theoretically right, but I considered the entirety of Mr Edenborough’s case to see whether it mattered, and since in the end it did not I did not constrain my deliberations by reference to an unresolved pleading point.

Similarity of services - the Advertising Services

160. I start with advertising even though not much of this category survives the revocation claim. Mr Aikens submitted that this was not an activity separate from the Platform Services. It did not generate a separate income stream, so far as there was any advertising at all. In fact he submitted that what ELA did was not “Advertising” within the specification of the marks, and relied on evidence from Mr Achilleous and Mr Poyser to the effect that ELA was an “aggregator” or “portal”.
161. This part of Mr Aikens’ submissions turns on whether what happened involved any advertising at all (though his submissions seemed to acknowledge that there was some). Mr Edenborough said it did. I need to deal with that first.
162. I agree with Mr Edenborough that what ELA does amount to the provision of advertising services. Saying it is part of the Platform Services (which as a matter of contract it presumably is) is not determinative of whether advertising services are provided. An umbrella term such as “Platform Services” might justifiably require a breakdown into its separate elements, and in this case it does. When ELA enters into an arrangement pursuant to which, under its banner, it will give notice of auctions, and actively list them with clickable links to a signing up procedure and a catalogue, and then put up the auction house’s lot descriptions, it is providing a facility for the name, auction date and catalogue to be placed before the public in order that they can be drawn to the public’s attention, and all under its banner. The auction house is advertising its services and its wares, and ELA is providing the medium for that to be done.
163. Mr Aikens did not accept that. He drew attention to what Arnold J said in *W3* at paragraph 179:

“179. More importantly, counsel for *W3* submitted that such activities did not amount to the provision of the service of “advertising” under the relevant trade mark. In support of this submission, he relied upon the decision of the Court of First Instance in Case T-143/16 *Intesa Sanpaolo SpA v European Union Intellectual Property Office* [EU:T:2017:687] that the publication and distribution of brochures relating to financial services did not amount to the provision of advertising services. Perhaps more pertinently, in *Avnet Inc v Isoact Ltd* [1998] FSR16 Jacob J held that an internet service provider which provided its customers with a hosted

webpage which the customers could use to advertise their goods or services was "not providing advertising ... services in the way that, for example, an advertising agent does". In my judgment, however, the present case is distinguishable from those two cases. If one takes the easyJet in-flight magazine by way of example, then I consider that, in substance, easyJet was providing a service to the advertisers that can fairly be described as "advertising": it was advertising their businesses to its passengers."

164. Mr Aikens submitted that in this case what ELA did was not the same sort of thing as an advertising agency does. The advertising (and as I have observed, he seems to accept that there was some) was inextricably linked to the Platform Services and does not result in a separate income stream. The evidence of Mr Achilleous was that ELA was a "marketplace, an aggregator site" and provided a "portal", and Mr Poyser also said that ELA was an "aggregator".
165. I agree that what ELA did was not what an advertising agency does, but I do not think that a natural meaning of "Advertising Services", whether as a matter of the everyday use of the word or as a matter of construction of the trade mark specification, is confined to that. It is true that in the *Avnet* case referred to by Arnold J, Jacob J used that as an example of advertising services, but it was merely an example and he was contrasting it with the provision of the means for a trading company to set up its own website via the claimant's services. He was not defining "Advertising" exclusively in that manner but merely giving an example. His own case was not like the present - he described it as one in which:

"They [ie the defendant] are what is known as an Internet Service Provider (ISP).

...

They do no more than provide a place where their customers can put up whatever they like. They are not assisting the customers to write their copy, they suggest their customers can write their own copy if they want to. But they are not in any way even requiring their customers or expecting their customers to put up advertisements. The customers can put up whatever they like. I do not think that in substance what these defendants are doing is providing "advertising and promotional services".

166. That does not describe the present case. The present case is analogous to that which Arnold J said would amount to the provision of advertising services, namely carrying third party advertisements in its in-flight magazine.
167. Accordingly, I do not think it right to say that advertising as a service properly so called was not being provided, or that it was not a separate service. In reality it was both, and it was an important part of the service too, where an auction house decided to take the route of drawing attention to its auctions through the ELA platform.
168. Having said that, on my findings there is no identity between the Advertising Services and any relevant surviving element of advertising after the revocations which I have determined to be appropriate. So far as the Easygroup mark is concerned, what survives is related only to services to licensees as part of the benefits of the licence, which is different from the advertising services provided by ELA to auction houses. There is no identity or similarity. The same applies to the surviving advertising category for the easyProperty mark. ELA's advertising services are not even similar, let alone identical, to the advertising of real estate auctioneering even if that survives for easyProperty. At all relevant times ELA did not advertise real estate auctions or auctioneers at all. (Mr Achilleous said that ELA had started to get involved in real property auctions, but only in the last couple of years, which makes them irrelevant to this action.)

Similarity of services - Information Services

169. These are the activities of publishing auction catalogues and auction event details online and informing bidders of auctions online and by email. As I have already described, these activities occur, in the sense, at least, of making the material available to the public. The actual pleading, admitted by the defendants, is that:

“Auction houses also publish their auction catalogues and auction event details via the First Defendant's platform.” (Amended Particulars of Claim para 37).

The claimant submits that these activities are identical to, or alternatively similar to, the elements of the Easy Networks specifications that were the subject of Mr Aikens' revocation claims. I have indicated that all but “data

communications services” fall to be revoked, so it is necessary to consider only the survivor.

170. A question of construction arises in relation to this point. Are the activities of ELA identical to or similar to “data communications services”? Again, there was no debate or analysis about this specific point before me, but it nonetheless seems to me that the answer is no. The expression “data communications services” suggests an exercise in which what is offered is that of communicating data per se, as an internet service provider would, though there are doubtless other forms of service of that kind. Every communication over the internet involves the communication of data, but when an online retailer advertises and then effects a sale of a product the average consumer would not consider that what is happening is data communication. He or she would consider that what is happening is an online retail sale. The position is, in my view, no different when the bidder/consumer in the present case engages with ELA’s website, by reading a catalogue, studying an entry, registering and then bidding and paying for purchases. That consumer might well consider that he/she has received the benefit of making an online retail sale, and of receiving prior information relevant to that sale, but I do not accept that that consumer would consider that he/she has received “data communications services”.
171. The same is true of the lesser activity of merely advertising auctions and pointing bidders to the auction house’s website.
172. The same applies to the other consumers, namely auction houses who attract customers and effect sales through the ELA website. Those consumers would not consider they are receiving “data communications services”. They might consider they were receiving publicity services, or advertising or promotional services, but they would never describe them as “data communications services” even though, as with every other interaction with the internet, there was data communication involved.
173. Again, the same applies to those auction houses who used ELA’s platform via their “white label” sites. They are not receiving any advertising or promotional services as such because ELA is not doing any advertising or promoting. They would be receiving software services enabling online sales. Although, again, data communication is inevitably involved, I consider that whatever label one might want to put on them, the services would not be regarded as “data communications services”. They are much more than that.

174. It follows, therefore, that the Information Services provided by ELA were not identical to or similar to the surviving category of potentially relevant services covered by the Easy Networks mark.
175. Turning next to the easyGroup mark, it is also said that the Information Services are the same as or similar to that mark's registered services "business information services" and "promotional services". It is necessary to consider these in their would-be amended forms, which confine the services to services provided to licensees. Once that is done it is apparent that ELA's services are not the same. They are not confined to any form of licensees because that is not how ELA operates. ELA offers these services to the chattel auctioneering community as a whole; they are not ancillary to a licence in whose reputation Easygroup has its own interest. There is no relevant degree of identity or similarity here.
176. I therefore find that there is no identity or similarity between the Information Services and any of the services covered by the marks in suit.

Similarity of services - the Payment Services

177. The Payment Services are said to be identical, or alternatively similar, to the services in the easyMoney marks. In this instance I consider that Mr Aikens is correct in saying that these should not be treated as separate services provided under the mark. They are part of a bigger package and should not be treated as being provided as a separate service. So far as the auction houses are concerned, they are ancillary to the online auction part of the services which are provided to them. So far as the bidders are concerned, the position is the same, and there is no evidence that such a bidder would have been aware that ELA was providing them with a payment service anyway. On the evidence, ELA was no more than a conduit of information between the successful bidder and the relevant auctioneer, so that money could be obtained from the actual payment service which provided the money and debited the successful bidder. ELA never handled money and never handled banking details. These are not a separate service for present purposes.
178. Accordingly it is unnecessary to consider this mark further under this heading. If I were wrong so far so that it became necessary to consider identity or similarity of services, I would have been minded to hold that the two potential surviving categories of services which have survived the revocation claim ("monetary affairs" and "financial services") required to be limited by partial revocation for the reasons appearing above, and whatever the revised services

would be would be nothing like the Payment Services in this case so, once again, there would be no identity or similarity of services.

Similarity of services - the Platform Services

179. As appears from the table in Appendix 3, identity or similarity of services is sought to be established in relation to the Easy Networks mark and the easyGroup mark. The previous comparisons of services largely provides the answer to this. So far as the Easy Networks mark is relied on, most of the contested categories fall to be revoked. So far as the surviving “data communication services” element is concerned, the answer is the same as it is in relation to the Information Services. So far as the “white label” element is concerned, the average consumer would not consider the service is a data communication one. The use of the service, when in operation, ultimately involves the transmission of data, but that is not of the essence of the service. The service is the provision of a software platform which enables an auction house to conduct on-line auctions. The data transmission is technically part of what happens, but it does not describe the service.
180. I have already considered whether the other aspects of the service (the presentation of the auctioneer’s wares through the ELA site) is identical to or similar to this aspect of the Easy Networks services, and have held they do not.

Similarity of services - conclusion

181. It follows from the foregoing that Mr Edenborough’s case fails at this hurdle. There is no relevant similarity of services.

Confusion

182. This question does not fall to be considered in the light of my previous conclusions. I have considered whether I should go on to address the point in case I am wrong in my conclusions on non-use and lack of identity/similarity of services, but decided I will not do so. The exercise would have involved a lot of assessments on a number of different bifurcations, and in the end it would not be fruitful.

Conclusion under section 10(2)

183. It follows that the claim of Easygroup under section 10(2) of the Act fails.

Section 10(3) of the Act

184. Section 10(3) of the Act is relied on by Mr Edenborough as presenting an alternative route for his client. It provides:

“10(3) A person infringes a registered trade mark if he uses in the course of trade a sign which—

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

(c) 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.”

Mr Edenborough advances a claim under this section on behalf of Easygroup, based on the facts appearing below and in relation to each of the marks in suit in this action.

185. The parties were agreed on most of the relevant law in relation to this claim. The agreed basic requirements are once again set out in *W3* by Arnold J, which again I gratefully adopt:

“289. In *Davidoff & Cie SA v Gofkid Ltd* (C-292/00) [2003] E.C.R. I-389 and *Adidas-Salomon AG v Fitnessworld Trading Ltd* (C-408/01) [2003] E.C.R. I-12537 the CJEU held that, although the wording of art.9(1)(c) of the Regulation and art.5(2) of the Directive refer to goods or services which are not similar to those for which the mark is registered, this form of protection also extends to cases where a sign which is identical with or similar to the trade mark is used in relation to goods or

services identical with or similar to those covered by the trade mark. The Court of Justice also held in *Adidas-Salomon* that it is not necessary for the trade mark proprietor to establish a likelihood of confusion in order to succeed in such a claim.

290. Accordingly, in order to establish infringement under art.9(1)(c) of the Regulation [which is the equivalent of section 10(3), nine conditions must be satisfied: (i) the trade mark must have a reputation in the relevant territory; (ii) there must be use of a sign by a third party within the relevant territory; (iii) the use must be in the course of trade; (iv) it must be without the consent of the proprietor of the trade mark; (v) it must be of a sign which is at least 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. ...

291. Reputation of the trade mark. This is not a particularly onerous requirement. As the Court of Justice explained in *General Motors Corp v Yplon SA* (C-375/97) [1999] E.C.R. I-5421:

“24. The public amongst which the earlier trade mark must have acquired a reputation is that concerned by that trade mark, 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 trade mark must be known by a given percentage of the public so defined.

26. The degree of knowledge required must be considered to be reached when the earlier mark is known by a significant part of the public

concerned by the products or services covered by that trade mark.

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

....

294. Link. Whether the use of the sign gives rise to a link between the sign and the trade mark in the mind of the average consumer must be appreciated globally having regard to all the circumstances of the case: see *Adidas-Salomon v Fitnessworld* at [29]-[30] and *Specsavers (CJEU)* at [120]. The fact that the sign would call the trade mark to mind for the average consumer, who is reasonably well informed and reasonably observant and circumspect, is tantamount to the existence of such a link: see *Intel Corp Inc v CPM United Kingdom Ltd (C-252/07)* [2008] E.C.R. I-8823 at [60] and *Specsavers (CJEU)* at [121].

295. Detriment to the distinctive character of the trade mark. In *Intel* the Court of Justice held as follows in relation to this type of injury:

i) The more immediately and strongly the trade mark is brought to mind by the sign, the greater the likelihood that the current or future use of the sign is detrimental to the distinctive character of the mark: [67].

ii) The stronger the earlier mark's distinctive character and reputation, the easier it will be to accept that detriment has been caused to it: [69].

iii) The existence of a link between the sign and the mark does not dispense the trade mark proprietor from having to prove actual and

present injury to its mark, or a serious likelihood that such an injury will occur in the future: [71].

iv) The more “unique” the trade mark, the greater the likelihood that use of a later identical or similar mark will be detrimental to its distinctive character: [74].

v) Detriment to the distinctive character of the trade mark is caused when the mark’s ability to identify the goods or services for which it is registered and used as coming from the proprietor is weakened. It follows that proof that the use of the sign is or would be detrimental to the distinctive character of the earlier mark requires evidence of a change in the economic behaviour of the average consumer of the goods or services for which the mark is registered consequent on the use of the sign, or a serious likelihood that such a change will occur in the future: [77].

296. In *Environmental Manufacturing LLP v Office for Harmonisation in the Internal Market (C-383/12)* [EU:C:2013:741] the Court of Justice re-iterated 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 mark is registered consequent on the use of the sign, or a serious likelihood that such a change will occur in the future. In this connection, the Court held:

“42. Admittedly, Regulation No 207/2009 and the Court’s case-law do not require evidence to be adduced of actual detriment, but also admit the serious risk of such detriment, allowing the use of logical deductions.

43. None the less, such deductions must not be the result of mere suppositions but, as the General Court itself noted at paragraph 52 of the judgment under appeal, in citing an earlier judgment of the General Court, must be founded on ‘an analysis of the probabilities and by taking account of the normal practice in the relevant

commercial sector as well as all the other circumstances of the case’.”

297. Detriment to the repute of the trade mark. The Court of Justice described detriment to the reputation of the earlier mark in Case C-487/07 *L’Oréal SA v Bellure NV* [2009] E.C.R. I-5185 at [40] as follows:

“As regards detriment to the repute of the mark, also referred to as ‘tarnishment’ or ‘degradation’, such detriment is caused when the goods or services for which the identical or similar sign is used by the third party may be perceived by the public in such a way that the trade mark’s power of attraction is reduced. The likelihood of such detriment may arise in particular from the fact that the goods or services offered by the third party possess a characteristic or a quality which is liable to have a negative impact on the image of the mark.”

298. Unfair advantage. The Court of Justice described taking unfair advantage of the distinctive character or repute of a trade mark in *L’Oreal v Bellure* at [41] as follows:

“As regards the concept of ‘taking unfair advantage of the distinctive character or the repute of the trade mark’, also referred to as ‘parasitism’ or ‘free-riding’, that concept relates not to the detriment caused to the mark but to the advantage taken by the third party as a result of the use of the identical or similar sign. It covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation.”

299. The Court of Justice explained the correct approach to determining whether unfair advantage has been taken of the distinctive character or repute of the trade mark in that case as follows:

“44. In order to determine whether the use of a sign takes unfair advantage of the distinctive character or the repute of the mark, it is necessary to undertake a global assessment, taking into account all factors relevant to the circumstances of the case, which include the strength of the mark’s reputation and the degree of distinctive character of the mark, the degree of similarity between the marks at issue and the nature and degree of proximity of the goods or services concerned. As regards the strength of the reputation and the degree of distinctive character of the mark, the Court has already held that, the stronger that mark’s distinctive character and reputation are, the easier it will be to accept that detriment has been caused to it. It is also clear from the case-law that, the more immediately and strongly the mark is brought to mind by the sign, the greater the likelihood that the current or future use of the sign is taking, or will take, unfair advantage of the distinctive character or the repute of the mark or is, or will be, detrimental to them (see, to that effect, Intel Corporation, paragraphs 67 to 69).

45. In addition, it must be stated that any such global assessment may also take into account, where necessary, the fact that there is a likelihood of dilution or tarnishment of the mark.

...

49. In that regard, where a third party attempts, through the use of a sign similar to a mark with a reputation, to ride on the coat-tails of that mark in order to benefit from its power of attraction, its reputation and its prestige, and to exploit, without paying any financial compensation and without being required to make efforts of his own in that regard, the marketing effort expended by the proprietor of that mark in order to create and maintain the image of that mark,

the advantage resulting from such use must be considered to be an advantage that has been unfairly taken of the distinctive character or the repute of that mark.”

300. It is clear both from the wording of art.5(2) of the Directive and art.9(1)(c) of the Regulation and from the case law of the Court of Justice interpreting these provisions that this aspect of the legislation is directed at a particular form of unfair competition. It is also clear from the case law both of the Court of Justice and of the Court of Appeal in this country that the defendant’s conduct is most likely to be regarded as unfair where he intends to take advantage of the reputation and goodwill of the trade mark. Nevertheless, in *Jack Wills Ltd v House of Fraser (Stores) Ltd* [2014] EWHC 110 (Ch); [2014] F.S.R. 39 at [80] I concluded that there is nothing in the case law to preclude the court from holding in an appropriate case that the use of a sign the objective effect of which is to enable the defendant to benefit from the reputation and goodwill of the trade mark amounts to unfair advantage even if it is not proved that the defendant subjectively intended to exploit that reputation and goodwill. Counsel for W3 did not challenge that conclusion.”

186. As Mr Aikens suggested, further useful guidance on the concept of unfair advantage has been given by the General court in *IG Communications Ltd v OHIM (Citigate intervening)* Case T-310/09:

“110. The concept of the unfair advantage taken of the distinctive character or the repute of the earlier mark by the use without due cause of the mark applied for encompasses instances where there is clear exploitation and ‘free-riding on the coat-tails’ of a famous trade mark or an attempt to trade upon its reputation. In other words, this concerns the risk that the image of the mark with a reputation or the characteristics which it projects will be transferred to the services covered by the mark applied for, with the result that the marketing of those services can be made easier by that association with the earlier mark with a reputation.

111. Accordingly, the risk that the use without due cause of the mark applied for will take unfair advantage of the distinctive character or the repute of the earlier trade

mark continues to exist where the consumer, without necessarily confusing the commercial origin of the product or service in question, is attracted by the mark applied for itself and buys the product or service covered by it on the ground that it bears that mark, which is identical or similar to an earlier mark with a repute.”

I find that to be particularly helpful in the present case.

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 LR 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] FSR 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 a 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.

188. With that law in mind I can now pass on to consider the facts in this matter and the case that they are said to generate. In order to do so it is necessary to go into the history of the defendant's signs.

Section 10(3) - the facts

189. Mr Burnside and Mr Achilleous chose the name Easy Live Auction in the course of setting up the business some time before April 2009. Mr Achilleous told me that that name was chosen to reflect the ease of use of their systems. At some point around this time an easyPizza leaflet came into the office and jokes were made about a resemblance between Mr Achilleous and Sir Stelios, whose face appeared on the leaflet. A copy of the leaflet seems to have been kept, somewhat surprisingly. Mr Achilleous explained it was kept by his partner, who was a bit of a hoarder.
190. It is odd that Mr Achilleous would have remembered this particular incident, but it was not put to him that seeing this leaflet caused him to decide to name his business "Easy". I find that it did not. It may even be (it was not investigated) that the leaflet was brought into the office after the name had been adopted because the recipient was struck by a similarity between the man behind the claimant's business and the man behind the pizza business. At all events, I do not think there is a link between this leaflet and the naming of ELA. Mr Achilleous accepted that he knew of Easyjet at the time.
191. Mr Burnside's evidence was that Mr Achilleous proposed the name and it was chosen to reflect the ease of use of the system. He was not aware of the easyPizza leaflet until disclosure in this action. I accept that evidence. I therefore accept that when the name was chosen, and the first sign was adopted, there was no intention to choose a name or style which was close to, or reflected,

or took advantage of a supposed association with any of Sir Stelios's Easy brands. There was nothing in its style which would suggest any association. The wording was in white on a blue background, the words were separated and each of them was capitalised. It was designed by Mr Burnside.

192. The style of the sign was then changed. The individual words were closed up and the word "easy" lost its capital letter. It was also italicised and emboldened and a font was chosen which, objectively speaking, looks significantly closer to the Cooper Black font which is used by the Easy group. Mr Burnside said that these changes were considered and were deliberate. They were produced as a result of instructions given to an out-of-house graphic designer and then approved. What those instructions were did not emerge from the evidence, but it is not sensible to believe that the designer was just given a free hand. Mr Burnside must have had a significant part in the design process. What he did not say was that these changes were all the idea of a graphic designer.
193. It was put to Mr Burnside that, objectively speaking, those changes brought the logo closer to the various easyJet logos. He did not accept that. I consider that his non-acceptance was a defensive response, anticipating an allegation of copying which he would want to deny, and I consider that his defensiveness was born of nervousness about that denial. It was then put to him that the changes were made in order to get the ELA brand close to the Easy brand, and done to make it more likely that a consumer would call the Easy group logos to mind, and he denied that.
194. Mr Burnside demonstrated that he was aware of other brands and of the benefits of producing parodies (as he called them) in other marketing material. In one piece of such material the claimant set out a comparison table between themselves and other bidding platforms (not fully identified), on which he placed a reference to GoCompare (a version of the name and logo of an insurance price comparison website) and a meerkat (the symbol of another such website). I consider that this reflects his mindset.
195. Having considered this material, and having seen Mr Burnside in the witness box, I do not accept his protestations that he did not intend to bring his branding closer to the Easy group's style. Objectively his sign had moved closer and (as observed above) it gained a small to moderate, but nonetheless significant, amount of similarity. I find that that was intentional on the part of Mr Burnside and he achieved it with the help of his graphic designer.

196. It was put to him that the ® mark was removed in order to get the sign closer still to the Easy logos, but he denied that, and I accept that denial. I also accept his evidence that the hammer was not removed in order to bring a greater closeness. He was further challenged that his use of the colour orange in certain documents deploying the signs was a deliberate allusion to the orange branding of the Easy brands. He denied that, and I accept his denial, not least because looking at the deployments the thought processes involved would be unlikely ever to have occurred to Mr Burnside.
197. However, despite my acceptance of those denials, the fact remains that the original conception of the Sign 2 was to produce something which at least alluded to the Easy branding and the similarities were not accidental. Such as they were, they were intentional and for that purpose.
198. The move to Sign 4 moved away from the Easy group branding by shifting the bold and italicised emphasis to the word “Auction”. Although Mr Burnside denied that that occurred because they were worried about the risk that the previous associations presented, I do not accept that. I think it likely that that risk was acknowledged and the change of sign was to remove or reduce the risk of a successful attack by the Easy group. A letter before action had been sent on 30th October 2018, followed by a couple of other combative letters passing each way. In the absence of positive evidence as to why that change took place, the natural inference is that it was an attempt to improve the sign in the face of an impending attack. That was because it was acknowledged that it needed improving in the sense of moving away from the style of easyJet’s marks.

Section 10(3) - assessment

199. I will approach this by taking the elements set out by Arnold J in *W3* at paragraph 290.

Section 10(3) - reputation

200. The claimant relies on all the marks in suit, so in theory it is necessary to consider the reputation of all the marks.
201. The defendants admit that easyJet had a reputation in relation to passenger airline services, but do not accept any other averred reputation. The only easyJet

services relied on in these proceedings come under that admission apart from “provision of food and drink; catering”. I do not consider a reputation in that latter area has been established, but that is of no real significance in this case. I do, however, consider (if it matters) that easyJet’s reputation will have been enhanced by its family (see above).

202. There was no real evidence as to the reputation of Easygroup with the relevant public (being members of the public in relation to use of the sign on ELA’s auction site, and auctioneers in relation to the services offered to them), and bearing in mind its apparent function as the company which organised the group’s marks and serviced licensees, that is not surprising. Mr Edenborough sought to establish a relevant reputation by relying on the odd website in which the Easygroup mark appeared in the context of a site which refers to the Easy marks that were actually trading, but having reviewed this small amount of evidence I do not consider this to be enough to establish a reputation for these purposes. It may have had a reputation amongst the licensees whom it serviced, but it did not have a reputation in relation to any of the services identified in Appendix 1, whether revoked or not with the relevant public.
203. EasyMoney was not offering credit card services at the relevant assessment date because it had sold its credit card business in 2006, and any residual reputation from that would have evaporated by 2010. Its ISA business did not start until 2017. Those activities therefore cannot have backed any reputation as at the relevant dates of assessment for the purposes of section 10(3) save for Sign 4. The easyMoney brand was launched with significant publicity, and in due course it assumed the price comparison activity referred to above. I would be prepared to find that it had a reputation in relation to these activities which might be capable of falling under the “monetary affairs” category of its marks, though there was no real debate about this. I will proceed on the footing that such reputation existed, but in truth I consider this adds little to the rather more considerable, and conceded, reputation of the easyJet mark.
204. On the evidence of Mr Gwilliam and some web pages produced in evidence I find that the Easy Networks mark had a relevant reputation. Mr Aikens addressed no submissions about Easy Networks in relation to this particular factor. I do not propose to dwell on this point because, as has already appeared, there is no relevant similarity between ELA’s signs and the Easy Networks mark.
205. The easyProperty mark was not used in trading until 2014, so it cannot have had a reputation as at the first date of assessment which I have found to be the correct date. As at the second date (the change to Sign 4) I consider it had acquired a reputation in relation to the unchallenged classes, based on the oral evidence I

heard and evidence as to the publicity given to its activities as demonstrated in the documentary evidence.

206. I therefore conclude, under this head, that the easyJet, Easy Networks and easyMoney marks had a reputation for the purposes of a section 10(3) assessment, but the others did not.

Section 10(3) - use and consent

207. The next three factors (use of the signs in the territory, in the course of trade and without consent) were all plainly fulfilled and there was no contest about that. Nor is there any dispute as to element (vi) (use in relation to goods or services). ELA's signs obviously were.

Section 10(3) - similarity

208. To fall within the section the sign must be at least similar to the mark. I have dealt with this above and repeat my findings.

Section 10(3) - the link

209. There must be a link between the sign and the mark in the mind of the average consumer. In assessing whether this is the case I have to consider all the circumstances, including the degree of similarity between the mark, the signs and the similarity of services (see *Intel Corp v CPM UK Ltd* Case C-252/07; [2009] ETMR 13 at para 42). It was common ground that, unlike a claim under section 10(2), it is not necessary to establish a similarity of services as between the mark and the sign, but a similarity will be capable of supporting the existence of a link.
210. If it matters, I do not consider that any link would be created between Sign 1 and any Easy group sign. The only linking factor would be presence of the word "Easy", and I do not consider that that would be enough. The services provided are very different, and there is no association between the services description in the mark (Live Auction) and any component part of any Easy mark (including

Easy Network). Since this point is not likely to be material to the outcome I do not dwell on it.

211. So far as Signs 2A, 2B and 3 are concerned, I do consider that a link would be formed at least with the easyJet mark and in the mind of the average consumer who is a member of the buying public. By 2010 it had a considerable market presence and the impact of the mark is enhanced by other members of the family, as to which see above. True it is that the services are different, but the average consumer would know, from the family that I have found to exist, and indeed the easyMoney mark as well, that the word “easy” was associated with services other than travel services, even though he/she would know that easyJet’s services and those of ELA were apparently not the same. I take into account that the Easy branding was almost invariably white text on an orange background, and ELA’s was white text on a blue background, but despite that I still think it likely there would be a link. Nor does the presence of the hammer (while it is there) provide a distinguishing factor removing what would otherwise be a link.
212. It is true, as frequently emphasised by Mr Aikens, that no evidence of anyone making the link was produced. No member of the public or auctioneer was produced to say that he/she was confused or made a link. Mr Aikens relied on Mr Poyser’s evidence that he did not in any way associate ELA with the Easy group. Despite the fact that some customer facing Easy group websites have a link marked “Brand Theft”, which invites the public to point out “easy” enterprises which might not be part of the group, no evidence of a link came from that source. Nor was there any written material which reflected a link, such as a complaint to an Easy group company about activities of ELA in such a way as suggested that a customer thought there was some sort of link. It is not fanciful to wonder about such correspondence because it was shown to exist in other cases. I have borne this point in mind.
213. Nor have I ignored the fact (proved by Mr Hansel), that there are lot of trading entities using the word “easy” in their title, followed by a description of goods or services. That is an important factor in the debate, which I have weighed.
214. Despite those factors, I have concluded, with the assistance of an additional matter which I am just about to mention, that a link is likely. That additional matter is what I have found Mr Burnside to have intended when he brought Sign 2 into existence. I consider that he sought to create a link with the easyJet family in the mind of the average consumer when he chose to bring his sign closer to the Easy brand sign. As I have pointed out, he was given to making allusions to other products when it suited him, and I consider that he did the same here. He accepted he was aware of easyJet at the time, and knew it was a

“big” entity, which must mean he was aware of the easyJet mark. He probably intended, in a manner he would describe as “cheeky” (his word to characterise his other references to branding), to “call to mind” the easyJet branding, to use the phrase appearing in the authorities. That being his intention, it hardly lies in his mouth, or the mouth of his company, to say it was completely unsuccessful, and I find that it would have been and was successful, albeit to a subtle extent. This feature is elaborated, with authorities, in my later section on passing off.

215. All that applies to Signs 2 and 3. Mr Burnside’s original motivation carries over from Sign 2 to 3. However, it does not apply to Sign 4 which has moved away from the easyJet presentation. The signs are sufficiently dissimilar that I do not consider that any link will have been formed in the minds of consumers.

Section 10(3) - unfair advantage and the other elements

216. I consider this requirement to be fulfilled for reasons closely allied to the last point made above. Mr Burnside intended the allusion to the mark because he thought it would bring some, albeit limited and unquantifiable, benefit to his company’s business, without paying for it. See in particular the remarks of Arnold J in paragraph 300 of *W3*, cited above. In the metaphor of other authorities, his company was “riding on the coat tails” of the easyJet mark and the members of its family. This sort of calculated behaviour, albeit probably lightly calculated, is in my view plainly taking unfair advantage of the mark. It is hard to see why it would not be unless it was so hopeless as to be ineffective, which this effort was not.
217. If it is necessary to prove a change of economic behaviour in order to establish actionable unfair advantage, I would hold it existed, albeit subtly. The whole purpose of the mimicry is to operate on the mind of the consumer. A consumer, and particularly the “retail” bidding consumer (though probably not the auctioneer) would at least look on ELA with more favour, or perhaps less disfavour. This was an intended consequence, and amounts, if required, to a change in the consumer’s economic behaviour. That is why Signs 2 and 3 were adopted or (so far as Sign 3 carried on the work of Sign 2) maintained.
218. That makes it unnecessary to go into the two alternatives to unfair advantage, but I will address them briefly. I do not consider that there was any real detriment to the repute or distinctive character of the marks. Nothing happened which would be likely to have worked to the detriment of the distinctive character of the easyJet mark or the other marks and there was no evidence that

it occurred. So far as repute is concerned, much emphasis was placed on poor reviews given to ELA on Trustpilot (a review site), which ELA sought to counter by pointing out more recent reviews were much more favourable (albeit that Easygroup suggested that they were somehow contrived by the defendants) and by pointing out that easyJet itself attracted poor reviews. Bearing in mind the limited extent of ELA's business until 2019, the difference in services between those provided by ELA and the easyJet group, and the nature of activities involved, and despite the link that was capable of being formed in customers' minds, I do not consider that the easyJet marks will have in any way realistically been adversely affected by the deployment of the defendants' signs.

219. There was no due cause for these activities. None was suggested.

Section 10(3) - conclusion

220. I therefore find that there was an infringement of the easyJet mark, and if relevant the easyMoney mark, under section 10(3) during the period that Signs 2 and 3 were deployed by the defendants. It is unnecessary to consider whether any other marks were infringed anyway, in the light of that finding. The Limitation Act 1980 is likely to operate in relation to the impact of this finding.. The parties may be able to agree how that works. If they do not I will hear further submissions about it. There was no other infringement. Sign 4 does not infringe under this head. The calculated "calling to mind" did not exist because it would no longer call the marks to mind, and the intention that it should do so had gone.

221. In relation to the trade mark claims I was invited to give the defendants the benefit of the so-called defence of honest concurrent use. That defence can hardly apply in the circumstances in which Mr Burnside came to devise ELA's sign so it is unnecessary to consider it further.

Passing off - general

222. Because of what he perceived to be an overlap between his trade mark and passing off cases, in his final submissions Mr Edenborough helpfully confined his passing off case to two elements, namely easyJet, and the easyProperty marks if the marks themselves were revoked and not available for trade mark infringement. As I understand it he kept these passing off points alive on a contingent basis, the contingency being the failure of his trade mark case. Since

I have found he succeeds on one of his trade mark claims it is not clear to me whether he would need to pursue this case, but I will deal with it anyway.

223. The ingredients for a passing off claim were not in dispute. They are goodwill, misrepresentation and damage - see *Reckitt & Coleman v Borden Inc* [1990] 1 WLR 491. The misrepresentation must be one:

“ ... leading, or likely to lead the public to believe that the goods or services offered by [the defendant] are goods or services of the plaintiff.” (*Reckitt* at page 406).

224. There was agreement as to the relevant date for assessing passing off, which was the date when each offending sign of ELA (so far as materially different from each other) was first used. So the dates are the same as those which I have found above to be relevant to the trade mark infringement claim, that is to say May 2010 for Signs 2A and 2B, April 2016 for Sign 3 and March 2019 for Sign 4.

225. I will take the constituent elements in turn.

Passing off - goodwill

226. There was no dispute as to the goodwill of easyJet in relation to airline travel. It is plain that that goodwill was very significant at all relevant times. Mr Edenborough also sought to establish goodwill in relation to advertising services, based on the provision of advertising space in easyJet’s in-flight magazine to third party concerns. Not much effort was devoted to establishing any more than that such services were offered (as they must have been, because the advertisements appeared) and that they were taken up. It was not demonstrated how such services were presented to would-be consumers of those services (the advertising concerns) but it seems to me to be likely that there was at least limited goodwill in that area, though in truth it adds little to the much more obvious goodwill in the travel services. Mr Anderson himself referred to brands (including the in-flight magazine names) as being used “in conjunction with easyJet”, which reflects their subsidiary nature on this context.

227. Mr Edenborough accepted that there was no goodwill in easyProperty at the time of the first use of the offending signs because there was no trading under the mark. However, he said that there was goodwill by the time of the Sign 3

in 2016. I agree. easyProperty was launched in September 2014 with some national press coverage and it was advertised on the media, amongst other places. It started by offering residential lettings and management services for landlords and in August 2015 there was a soft launch of a residential sales offering. By the year end in September 2016 easyProperty had generated 20,000 new users. It entered into the sales market for commercial properties in 2015, but it does not seem that that had developed a lot before 2016. The goodwill in the business described in this paragraph was extended further across the country as a result of the GPEA merger described above.

228. Thus goodwill has been established in relation to these marks. However, the services in relation to which goodwill was established are different from those which ELA offered under its signs.

Passing off - misrepresentation

229. The way that Mr Edenborough put his case in his final written submissions was that, by reason of prior submissions made about confusion in relation to the easyProperty marks, “the provision of Ds’ Services under Ds’ Signs constitutes representations to consumers in England and Wales that those services are endorsed by or related to C somehow in the course of business.” That is the case I shall consider albeit relatively shortly in the circumstances. He did not put his case as high as suggesting that there was an attempt to represent that ELA’s business was easyJet’s, or easyProperty’s. He put it at the lower level of endorsement or “connection”.

230. It would seem that that lower level is sustainable as a matter of authority. In *Bulmer v Bollinger* [1978] RPC 79 at p117 Goff LJ observed:

“It is sufficient in my view if what is done represents the defendant's goods to be connected with the plaintiff's goods in such a way as would lead people to accept them on the faith of the plaintiff's reputation. Thus for example it would be sufficient if they were taken to be made under licence, or under some trading arrangements which would give the plaintiff some control over them...”

231. The claimant has a good starting point for this case, though it was not one stressed by Mr Edenborough in this context. I have found that Sign 2 was

deliberately created to form a link with, or to make an allusion to, easyJet at least. The strength of the allusion, subjectively speaking, was probably increased by the existence of the family of marks. That being the case, a “connection” with easyJet was intended in the sense that it was intended to suggest that ELA’s business was somehow connected with the easyJet brand. Just as I was prepared to conclude that there was a link for the purposes of section 10(3), starting from Mr Burnside’s intention to create one, I consider it right to take that intention as a strong starting point in the inquiry as to its effect for the purposes of passing off. The authorities on this are gathered together in *Wadlow on the Law of Passing Off, 6th Edn* at paras 5-101 to 5-105. Of particular significance are the following.

“No court would be astute when they discovered an intention to deceive, in coming to the conclusion that a dishonest defendant had been unsuccessful in his fraudulent design. When once you establish the intent to deceive, it is only a short step to proving that the intent has been successful, but it is still a step, even though it be a short step. To any such charge there must be, however, two conditions. The first is that it ought to be pleaded explicitly so as to give the defendant the opportunity of rebutting the accusation of intent. The second is that it must be proved by evidence.” (Lord Loreburn LC in *Claudius Ash & Sons Ltd v Invicta Manufacturing Co Ltd* (1912) 29 RPC 465)

232. It is true that in this case the point is not explicitly pleaded, but the deliberate adoption of the appearance of Signs 2 and 3 to form a link in the mind of the public was firmly put to Mr Burnside (transcript Day 3 p378-9) and he had a sufficient opportunity to meet it without its being pleaded. It was not unfair to mount that challenge and he has had a fair opportunity of rebutting it. The intention was sufficiently proved by the evidence that I have referred to above under the consideration of section 10(3).
233. The evidential value of the intention is also apparent from the decision in *Australian Woollen Mills v Walton* (1937) 58 CLR 641:

“The rule that if a mark or get-up for goods is adopted for the purpose of appropriating part of the trade or reputation of a rival, it should be presumed to be fitted for the purpose and therefore likely to deceive or confuse, no doubt, is as just in principle as it is wholesome in tendency. In a question how possible or prospective purchasers will be impressed by a given picture, word or appearance, the instinct and judgment of traders is not to

be lightly rejected, and when a dishonest trader fashions an instrument or weapon for the purpose of misleading potential customers he at least provides a reliable and expert opinion on the question whether what he has done is in fact likely to deceive. Moreover he can blame no one but himself...”

It is unnecessary to brand Mr Burnside as dishonest for these purposes, and I do not do so, but his deliberate acts fit with the principles in that case.

234. So, as I have observed, the claimant has a good starting point in demonstrating the necessary misrepresentation and its propensity to mislead. I should only reject that case if it were clear enough that the deliberate act was ineffective to achieve the intended result, and I find that there is no real evidence of that. Whether, were I to be starting from a position in which that evidence of intention did not exist I would come to the same conclusion is perhaps not that easy, particularly in the light of the very different businesses of easyJet and its family (which is usually an important pointer against misrepresentation - see *Harrods Ltd v Harrodian School Ltd* [1996] RPC 697), but I do not need to go down that particular line of inquiry. I do not ignore that sort of evidence, but pointers the other way do not, in my view, negate the natural inference to be drawn from my finding as to Mr Burnside’s intention.
235. I therefore find that the deployment of Signs 2 and 3 amounted to a relevant misrepresentation of connection between ELA and the Easyjet brand and its family, and it would mislead a relevant portion of the average consumers, particularly the bidder/consumer. I do not need to consider the position of easyProperty.
236. All that applies to Signs 2 and 3 only. I do not consider that Sign 1 amounted to any form to representation as to a connection with the Easy group. The only possible connection would arise from the use of the word “Easy”, a common word, commonly in use in trade names and of low distinctive character. The mere use of that word in relation to a business with no real equivalent in the relevant Easy brands is not sufficient to create a connection in the minds of consumers. It was the adoption of the new font, the elision of the words with the retention of intermediate capitals, coupled with the intention of Mr Burnside which alter the position, something which was retained when the materially different Sign 3 was adopted. However, Sign 4 is different. The emphasis and italicisation of “easy” has gone, and the emphasis has shifted to the service and not “easy”. Mr Burnside did not say that his intention was to move away from the Easy brand signs, but that is the effect of what happened objectively speaking. These changes removed most of what had achieved Mr Burnside’s

original objective, and it could no longer apply. That does not of itself mean that the misrepresentation can now be treated as having gone, but it does mean that I have to consider the sign without the factor of Mr Burnside's intention. Doing so, I consider that the low level of similarity of the mark, coupled with the difference of services and the frequent use of "easy" in connection with non-offending businesses means that the average consumer would not understand this sign to represent any connection with easyJet or easyProperty. No misrepresentation, and therefore no passing off, arises out of the use of Sign 4.

Passing off - damage

237. The occurrence, or the likely occurrence, of damage is the next ingredient of the tort which has to be considered. Here Mr Edenborough's case fails. Although I have found an intention to forge an otherwise absent connection, I do not consider that there is sufficient evidence of the likelihood of damage. There cannot be a realistic suggestion of the diversion of any trade because of the absence of any real similarity or overlap of the businesses of the claimant's franchisees on the one hand and of ELA on the other. Nor, in my view, is there any real likelihood of damage to the repute of those brands. I consider that the poor reviews on Trustpilot which were in evidence are unlikely to be carried over to the Easy group brands in all the circumstances, despite the connection created by Mr Burnside. Mr Edenborough relied on benefit to the defendants in being able to use Signs 2 and 3 without a licence as giving rise to damage because the ability of the claimant to charge others for a licence would be diminished, but I am afraid I do not understand that logic.

Passing off - conclusion

238. I therefore conclude that the passing off claim, if it matters, fails.


The claim for revocation of ELA's mark




239. ELA has the benefit of its own trade mark no 3372957 for the series EASY LIVE AUCTION/EASYLIVEAUCTION. It was accepted by both parties that, by and large, the fate of this claim mirrored the fate of the infringement claim, though there were some areas around the fringes where it might have an unmirrored life. No doubt for that reason the final submissions on the point are relatively brief, and I am afraid that they and their practical significance are no longer easy to follow, not least because it is not clear to me which user classes have survived partial surrenders by ELA which have apparently taken place. In


the light of the conclusions that I have reached on infringement and passing off, and my reasons, it is not clear to me how much of this claim now survives. I would not wish to make this already long judgment even longer by considering matters which do not have to be considered, especially when I no longer fully understand them. I shall therefore not rule on it in this judgment, but will consider it separately once the parties have considered how my actual judgment affects it. The matter will be dealt with at a separate hearing or, if appropriate, in more focused written submissions.

APPENDIX 1 – TABLE OF REGISTERED MARKS INDICATING THE REVOCATION CHALLENGES AND THE SERVICES RELIED ON




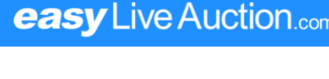

TABLE OF REGISTERED MARKS

No	Mark	Services relied on (with (a) those for which revocation sought highlighted and (b) those alleged to be identical or similar to Ds’s services for the purposes of s. 10(2) infringement underlined)	Filing date	Date registered	Type of infringement alleged
UK2016785	EASYJET	<p>39: Transportation of passengers and travellers by air; arranging of transportation of passengers and travellers by land; airline services; arranging, operating and providing facilities for vacations; travel agency and the provision of tourist services</p>	5/4/95	4/10/96	10(3)
EU1232909 / UK901232909	EASYJET	<p>39: Transportation of passengers and travellers by air; airline services; 42: provision of food and drink; catering</p>	1/7/99	4/11/02	10(3) / 9(2)(c)
UK2294415		<p>35: <u>Advertising, marketing and publicity services;</u> <u>business information services, promotional services;</u></p>	4/3/02	17/10/03	10(2) 10(3)

	[the lower mark is white text on orange]	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;			
UK902610160	EASYGROUP	<u>35: Advertising, marketing and publicity services;</u> <u>business information services;</u>	4/3/02	13/12/05	10(2) 10(3)
UK2265184	  [the lower mark is white text on orange]s	<u>36: ISA's; credit card services;</u> <u>monetary affairs, banking services;</u>	22/3/01	22/2/08	10(2) 10(3)
UK2497576	EASYMONEY	<u>36: financial services;</u> <u>monetary affairs, banking services;</u>	13/9/08	27/2/09	10(2) 10(3)
UK903838414	 [white text on orange]	<u>35: Advertising;</u> <u>advertising of real estate sales, rentals, valuations, auctioneering.</u>	24/5/04	27/9/05	10(2) 10(3)

		36: real estate services including advice, brokerage, valuation, rental, management, investment, licensing, leasing, consultancy, insurance and facilitating sales			
sUK3143777	 <p>[the word "EASY" is white text on purple]</p>	37: Installation of wireless telecommunications equipment and wireless local area networks; Telephone installation and repair; Installation of data network apparatus; Installation and repair of telecommunications networks; Installation of computer networks; Installation, repair and maintenance of computers and computer peripherals; Telecommunication wiring. 38: Internet access services; <u>Communication of information by electronic means;</u> <u>Communication services over computer networks;</u> <u>Data communications services;</u> <u>Data transmission.</u>	11/1/1 6	13/5/16	10(2) 10(3)

APPENDIX 2 – THE FIRST DEFENDANT’S SIGNS

No.	Sign	Date of first use pleaded by Ds
1	 Easy Live Auction®	around January 2010
2A	 easy Live Auction.com®	May 2010
2B	 easy Live Auction.com	June 2013
3	 easy Live Auction.com	April 2016
4	 easylive Auction.com	March 2019

The sign EASY LIVE AUCTION was used from 2010 and the sign EASYLIVEAUCTION or its equivalent (with words elided) was used from (probably) 2014.

APPENDIX 3 – TABLE OF ALLEGED SIMILARITIES

Ds' Services	s.10(2) Marks	Registered services	Submissions
The Advertising Services	The easyGroup Marks	Class35: Advertising, marketing and publicity services; promotional services;	Identical - the Advertising Services are contained within the broader category of registered services [alternatively, similar]
		business information services	Identical, alternatively similar, the Advertising Services disseminating business information
	easyProperty Mark	Advertising; advertising of auctioneering services”,	Identical - both advertising auctioneering [alternatively, similar]
The Platform Services	Easy Networks Mark	communication of information by electronic means; communication services over computer networks; data transmission [in the event of revocation of the above services, Data communications services;	Identical, alternatively similar, the Platform Services consist of each of the registered services Similar-the Platform Services constitutes the facilitation of live bidding by creating a network between the or interface channel between the auction house and the bidder]
	The easyGroup Marks	Advertising, marketing and publicity services; promotional services; business information services	Similar, advertising auctions and providing business information thereon is integral to the purpose and performance of the Platform Services
The Information Services	Easy Networks Mark	communication of information by electronic means; communication services over computer networks; data transmission	Identical, alternatively similar, the Information Services consist of each of the registered services

	The easyGroup Marks	business information services, promotional services	Identical, alternatively similar, the Information Services consist of each of the registered services
The Payment Services	easyMoney UKTMs	Financial services; monetary affairs [In the event of revocation of the above: credit card services, banking services]	Identical, alternatively similar, the Payment Services are contained within the broader category of registered services