

O/542/19

TRADE MARKS ACT 1994

IN THE MATTER OF REGISTRATION NO. UK00003285136

IN THE NAME OF HORTON COMMERCIALS LIMITED

FOR THE FOLLOWING TRADE MARK:

EASY MOVER

IN CLASSES 12, 35 AND 37

AND

AN APPLICATION FOR A DECLARATION OF INVALIDITY

UNDER NO. 502130 BY EASYGROUP LIMITED

BACKGROUND AND PLEADINGS

1. Horton Commercials Limited (“the proprietor”) is the registered owner of the trade mark **EASY MOVER** (“the Contested Mark”). The Contested Mark was filed in the UK on 25 January 2018 and was registered on 25 May 2018. It stands registered for the following goods and services:

Class 12 Body panels for vehicles; bodywork (vehicle-); carriage body parts.

Class 35 Retail services, wholesale services, mail order retail services, electronic retail services all in relation to the sale of vehicle bodies, vehicle body panels and vehicle body parts.

Class 37 Repair, installation and maintenance services relating to vehicle bodies, vehicle body panels and vehicle body parts.

2. On 3 July 2018, easyGroup Limited (“the applicant”) applied to have the Contested Mark declared invalid under section 47 of the Trade Marks Act 1994 (“the Act”). The applicant relies upon sections 5(2)(b) and 5(3) of the Act.

3. Under section 5(2)(b) of the Act, the applicant relies on the following trade marks:



(EUTM no. 15841554)

Colours claimed: Orange/white

Filing date 19 September 2016; registration date 6 March 2017

(“the First Earlier Mark”)

EASYVAN

(EUTM no. 12491841)

Filing date 10 January 2014; registration date 3 June 2014
("the Second Earlier Mark")

EASYCAR

(EUTM no. 10735553)

Filing date 16 March 2012; registration date 20 December 2012
("the Third Earlier Mark")

EASYBUS

(EUTM no. 10735561)

Filing date 16 March 2012; registration date 20 December 2012
("the Fourth Earlier Mark")

EASYJET

(EUTM no. 10584001)

Filing date 24 January 2012; registration date 9 January 2015
("the Fifth Earlier Mark")

4. The applicant relies on those goods and services for which the earlier marks are registered as listed in **the Annex to this decision**. The applicant claims that there is a likelihood of confusion because the respective goods and services are identical or similar and the marks are similar.

5. Under section 5(3), the applicant relies on the Fifth Earlier Mark only. The applicant claims that the Fifth Earlier Mark has a reputation in respect of the following goods and services:

Class 12 Vehicles; apparatus for locomotion by land, air or water; airplanes.

Class 39 Transport; packaging and storage of goods; travel arrangement; travel information; provision of car parking facilities; transportation of goods, passengers and travelers by air, land, sea and rail; airline and shipping services; airport check-in services; arranging of transportation of goods, passengers and travelers by land and sea; airline services; baggage

handling services; cargo handling and freight services; arranging, operating and providing facilities for cruises, tours, excursions and vacations; chartering of aircraft; rental and hire of aircraft, vehicles and boats; chauffeur services; taxi services; bus services; coach services; rail services; airport transfer services; airport parking services; aircraft parking services; escorting of travelers; travel agency services; tourist office services; advisory and information services relating to the aforesaid services; information services relating to transportation services, travel information and travel booking services provided on-line from a computer database or the Internet.

6. The applicant claims that use of the proprietor's mark would, without due cause, take unfair advantage of, or be detrimental to, the distinctive character and/or repute of the earlier marks.

7. The proprietor filed a counterstatement denying the claims made. However, it admitted that the Fifth Earlier Mark has a reputation in relation to "flight services". The proprietor put the applicant to proof of use of the Third and Fourth Earlier Marks in respect of those goods and services relied upon by the applicant.

8. The applicant is represented by Kilburn & Strode LLP and the proprietor is represented by Murgitroyd & Company. The applicant filed evidence in the form of the witness statement of Ryan Pixton dated 27 November 2018. The proprietor filed evidence in the form of the witness statement of David John Wolfenden dated 25 January 2019. The applicant did not file evidence or submissions in reply. No hearing was requested and only the proprietor filed written submissions in lieu. This decision is taken following a careful perusal of the papers.

EVIDENCE

The Applicant's Evidence

9. As noted above, the applicant's evidence takes the form of the witness statement of Ryan Pixton dated 27 November 2018. Mr Pixton is the Trade Mark Attorney acting

on behalf of the applicant. His statement does not contain any evidence of fact, but serves to introduce two exhibits into evidence. The first exhibit is the statement of Sir Stelios Haji-loannou dated 4 August 2017. The second consists of the annual reports of easyJet dated November 2013, November 2014, November 2015, November 2016 and November 2017.

10. Sir Haji-loannou is the founder and director of the applicant. I have read Sir Haji-loannou's statement in its entirety and, in particular, I note as follows:

a) The first easyJet flight was in November 1995¹;

b) easyJet was the subject of a television programme called 'Airline' which was first broadcast in January 1999. The first series was watched by 7.5 million viewers per episode² and the second series was watched by 9 million viewers per episode³;

c) The number of passengers flown by easyJet has increased from 30,000 in 1995 to 74,921,296 in the year ending 31 January 2017⁴;

d) easyJet offers flights to and from destinations across Europe including the UK⁵;

e) Traffic statistics for the easyJet website are as follows⁶:

¹ Witness Statement of Sir Haji-loannou, para. 46

² Witness Statement of Sir Haji-loannou, para. 15

³ Witness Statement of Sir Haji-loannou, para. 58

⁴ Witness Statement of Sir Haji-loannou, para. 48

⁵ Witness Statement of Sir Haji-loannou, para. 50

⁶ Witness Statement of Sir Haji-loannou, para. 51

Year	Users	Page views
2011	122,774,951	1,290,544,781
2012	181,066,443	1,384,003,741
2013	182,844,400	1,622,460,308
2014	204,695,807	1,832,692,963
2015	208,363,085	1,625,290,017
2016	168,943,682	1,435,611,431
2017 ¹	86,917,538	919,258,176

f) easyJet revenue figures (not limited to the UK only) for the years ending November 2013, November 2014, November 2015, November 2016 and November 2017 are as follows⁷:

2013	£4,258million
2014	£4,527million
2015	£4,686million
2016	£4,669million
2017	£5,047million

g) Between the years 2013 and 2016, easyJet's annual reports confirm a market share in the UK of 20% and describe easyJet as the UK's leading short-haul airline⁸;

h) In 2017, 75% of seats on easyJet flights were booked by returning customers;

i) easyJet has also provided holiday and accommodation services⁹;

j) easyRentacar was first launched in early 2000 and has since been renamed easyCar¹⁰;

⁷ Exhibit REP2

⁸ Exhibit REP2

⁹ Witness Statement of Sir Haji-loannou, para. 53

¹⁰ Witness Statement of Sir Haji-loannou, para. 18

k) easyRentacar first launched an office in London, followed by offices in Glasgow and Barcelona¹¹;

l) Revenue for easyRentacar was as follows¹²:

End of September 2000	£3,344,000
End of September 2001	£17,987,000
End of September 2002	£28,306,000
End of September 2003	£32,498,000

m) “easyBus offers the lowest cost option for going from Luton Airport to central London and vice versa¹³”.

11. The applicant’s evidence was accompanied by written submissions. Whilst I do not propose to summarise those submissions here, I have taken them into consideration and will refer to them below as appropriate.

The Proprietor’s Evidence

12. As noted above, the proprietor’s evidence consists of the witness statement of David John Wolfenden. Mr Wolfenden is the Managing Director of the proprietor; a position he has held for 35 years.

13. I have read Mr Wolfenden’s evidence in its entirety. The purpose of this evidence is, predominantly, to support a due cause defence. I will return to this later in my decision if necessary.

14. The proprietor also filed written submissions in lieu and, whilst I do not propose to summarise those here, I have taken them into consideration and will refer to them below as appropriate.

¹¹ Witness Statement of Sir Haji-loannou, para. 82

¹² Witness Statement of Sir Haji-loannou, para. 84

¹³ Witness Statement of Sir Haji-loannou, para. 35

DECISION

15. Section 47 of the Act states as follows:

“47. –

(1) The registration of a trade mark may be declared invalid on the ground that the trade mark was registered in breach of section 3 or any of the provisions referred to in that section (absolute grounds for refusal of registration).

Where the trade mark was registered in breach of subsection (1)(b), (c) or (d) of that section, it shall not be declared invalid if, in consequence of the use which has been made of it, it has after registration acquired a distinctive character in relation to the goods or services for which it is registered.

(2) The registration of a trade mark may be declared invalid on the ground-

(a) that there is an earlier trade mark in relation to which the conditions set out in section 5(1), (2) or (3) obtain, or

(b) that there is an earlier right in relation to which the condition set out in section 5 (4) is satisfied

unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.

(2A) But the registration of a trade mark may not be declared invalid on the ground that there is an earlier trade mark unless –

(a) the registration procedure for the earlier trade mark was completed within the period of five years ending with the date of the application for the declaration,

(b) the registration procedure for the earlier trade mark was not completed before that date, or

(c) the use conditions are met.

(2B) The use conditions are met if –

(a) within the period of five years ending with the date of the application for the declaration the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or

(b) it has not been so used, but there are proper reasons for non-use.

(2C) For these purposes –

(a) use of a trade mark includes use in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered, and

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

(2D) In relation to a European Union trade mark or international trade mark (EC), any reference in subsection (2B) or (2C) to the United Kingdom shall be construed as a reference to the European Union.

(2E) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services.

(2F) Subsection (2A) does not apply where the earlier trade mark is a trade mark within section 6(1)(c).

[...]

(5) Where the grounds of invalidity exists in respect of only some of the goods or services for which the trade mark is registered, the trade mark shall be declared invalid as regards those goods or services only.

(6) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made.

Provided that this shall not affect transactions past and closed.”

16. Sections 5(2)(b) and 5(3) of the Act have application in invalidation proceedings because of the provisions set out above. By virtue of this section, a registered trade mark may be declared invalid if there is an earlier trade mark which satisfies the conditions under section 5(1), (2) or (3) of the Act and the owner of the earlier mark has not consented to the registration. In circumstances in which the earlier mark completed its registration process more than five years before the date of the application for invalidity, the use conditions must be met.

17. Section 5(2)(b) of the Act reads as follows:

“5(2) A trade mark shall not be registered if because –

(a)...

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.”

18. Section 5(3) of the Act reads as follows:

“5(3) A trade mark which -

(a) is identical with or similar to an earlier trade mark, shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom (or, in the case of a European Union trade mark or international trade mark (EC), in the European Union) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or repute of the earlier trade mark.”

19. An earlier trade mark is defined in section 6 of the Act, the relevant parts of which state:

“6(1) In this Act an “earlier trade mark” means –

(a) a registered trade mark, an international trade mark (UK) or Community trade mark or international trade mark (EC) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks

(2) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of subsection (1)(a) or (b) subject to its being so registered.”

20. The applicant's trade marks qualify as earlier trade marks under the above provisions. The First, Second and Fifth Earlier Marks had not completed their registration process more than 5 years before the date of the application for invalidity. The use conditions do not, therefore, apply to these marks and the applicant can rely upon all goods and services identified in its Notice of Invalidity. The Third and Fourth Earlier Marks had completed their registration process more than 5 years before the date of the application and are, therefore, subject to proof of use.

Proof of Use

21. The first issue is whether, or to what extent, the applicant has shown genuine use of the Third and Fourth Earlier Marks.

22. The relevant period is the five-year period ending on the date of the application for invalidity i.e. 4 July 2013 to 3 July 2018.

23. I bear in mind the case law on genuine use of a trade mark as summarised by Arnold J in *Walton International Ltd & Anor v Verweij Fashion BV* [2018] EWHC 1608 (Ch). Proven use of a mark which fails to establish that "the commercial exploitation of the mark is real" because the use would not be "viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods or services protected by the mark" is, therefore, not genuine use.

24. In *Awareness Limited v Plymouth City Council*, Case BL O/236/13, Mr Daniel Alexander Q.C. as the Appointed Person stated that:

"22. The burden lies on the registered proprietor to prove use... However, it is not strictly necessary to exhibit any particular kind of documentation, but if it 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. By the time the tribunal (which in many cases will be the Hearing Officer in the first instance) comes to take its final decision, the evidence must be sufficiently solid and specific to enable the evaluation of the scope of protection to which the proprietor is legitimately entitled to be properly and fairly undertaken, having regard to the interests of the proprietor, the opponent and, it should be said, the public.”

25. The only evidence filed by the applicant in relation to either the Third or Fourth Earlier Marks is contained within the statement of Sir Haji-loannou at Exhibit REP 1. Although revenue figures are provided for easyRentacar between 2000 and 2003 (which Mr Haji-loannou states later became easyCar) these pre-date the relevant period and do not, therefore, assist the applicant in demonstrating use of the Third Earlier Mark. The only statement made in the evidence to easyBus is “easyBus offers the lowest cost option for going from Luton Airport to central London and vice versa”. Again, no information is provided about the use of this mark in the relevant period. Consequently, the applicant has failed to demonstrate use of the Third and Fourth Earlier Marks during the relevant period and cannot, therefore, rely upon them for the purposes of the invalidation.

Section 5(2)(b)

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

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

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

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

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

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

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

(g) a lesser degree of similarity between the goods or services may be offset by a 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 to mind the earlier mark, 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 will wrongly believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of goods and services

27. The applicant's goods and services in classes 12 and 37 represent its strongest case. I have, therefore, only reproduced those goods and services below:

Applicant's goods and services	Proprietor's goods and services
<p>First Earlier Mark</p> <p><u>Class 12</u> Vehicles; vehicle parts and fittings; apparatus for locomotion by land, air or water.</p> <p><u>Class 37</u> Building construction; motor vehicle repair; computer installation services; electrical installation services; maintenance and repair of computer hardware; painting and decorating; cleaning services; vehicle maintenance and repair services; arranging for the maintenance of motor land vehicles; maintenance and repair of land vehicles; maintenance and repair of vehicles; provision of information relating to the maintenance of vehicles; refurbishment of vehicles; repair of</p>	<p><u>Class 12</u> Body panels for vehicles; bodywork (vehicle-); carriage body parts.</p> <p><u>Class 35</u> Retail services, wholesale services, mail order retail services, electronic retail services all in relation to the sale of vehicle bodies, vehicle body panels and vehicle body parts.</p> <p><u>Class 37</u> Repair, installation and maintenance services relating to vehicle bodies, vehicle body panels and vehicle body parts.</p>

accident damage to vehicles; repair of land vehicles; repair of vehicles; repair services relating to vehicles; service stations for the maintenance of vehicles; service stations for the repair of vehicles; servicing of vehicles; washing of vehicles.

Second Earlier Mark

Class 12

Vehicles; apparatus for locomotion over land and water; automotive parts and fittings; automotive components namely, parts and fittings for motor land vehicles and for engines; engines; motors; transmissions and transmission shafts; hydraulic cylinders; couplings; bearings; manual and power steering apparatus; vehicle steering columns; vehicle wheels; vehicle wheel hubs; wheel trims; accessories for vehicle wheels; deflectors; vehicle bodies; vehicle doors; vehicle wings; vehicle panels; bumpers; bonnets; dampers; grilles; vehicle horns; vehicle mirrors; mud flaps; roof racks; shock absorbers; springs; suspensions and suspension systems; steering wheels; steering linkages; torsion bars; tow bars; windows and window winding mechanisms; windscreen wipers; brakes; brake pads and brake linings for vehicles; caps for vehicle fuel tanks;

engine mountings; tanks; anti-theft devices; alarm apparatus and installations; accelerator cables; engine dampers; mountings; sumps and valves; gearboxes and gearbox mountings; gearbox filters; parts and fittings for all the aforesaid goods; mirrors; clutches, brake callipers, parts used within; transmission systems; braking systems; engine systems; chassis systems; foot pumps; vehicle covers.

Fifth Earlier Mark

Class 12

Vehicles; apparatus for locomotion by land, air or water; motors and engines for land vehicles; airplanes; vehicle body parts and transmissions; vehicle parts, parts for land, air or water locomotion apparatus; bicycles and spare parts thereof (included in this class), golf carts and baby carriages; scooters and spare parts; bike bags.

28. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account. In the judgment of the Court of Justice of the European Union (“CJEU”) in *Canon*, Case C-39/97, the court stated at paragraph 23 of its judgment that:

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

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

29. Guidance on this issue has also come from Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, where he identified the factors for assessing similarity as:

(a) The respective uses of the respective goods or services;

(b) The respective users of the respective goods or services;

(c) The physical nature of the goods or acts of service;

(d) The respective trade channels through which the goods or services reach the market;

(e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be found in supermarkets and, in particular, whether they are or are likely to be found on the same or different shelves;

(f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance, whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

30. In *YouView TV Ltd v Total Ltd*, [2012] EWHC 3158 (Ch), Floyd J. (as he then was) stated that:

“... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless the principle should not be taken too far. *Treat* was decided the way it was because the ordinary and natural, or core, meaning of ‘dessert sauce’ did not include jam, or because the ordinary and natural description of jam was not ‘a dessert sauce’. Each

involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question.”

31. In *Beautimatic International Ltd v Mitchell International Pharmaceuticals Ltd and Another*, [2000] F.S.R. 267 (HC), Neuberger J. (as he then was) stated that:

“I should add that I see no reason to give the word “cosmetics” and “toilet preparations”... anything other than their natural meaning, subject, of course, to the normal and necessary principle that the words must be construed by reference to their context.”

32. In *Avnet Incorporated v Isoact Limited*, [1998] F.S.R. 16, Jacob J. (as the then was) stated that:

“In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase.”

33. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the General Court (“GC”) stated that:

“29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut for Lernsysteme v OHIM – Educational Services* (ELS) [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark.”

34. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity

between goods. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06, the GC stated that “complementary” means:

“... there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think the responsibility for those goods lies with the same undertaking.”

35. In *Sanco SA v OHIM*, Case T-249/11, the GC indicated that goods and services may be regarded as ‘complementary’ and therefore similar to a degree in circumstances where the nature and purpose of the respective goods and services are very different, i.e. *chicken* against *transport services for chickens*. The purpose of examining whether there is a complementary relationship between goods/services is to assess whether the relevant public are liable to believe that responsibility for the goods/services lies with the same undertaking or with economically connected undertakings. As Mr Daniel Alexander Q.C. noted, as the Appointed Person, in *Sandra Amelia Mary Elliot v LRC Holdings Limited*, BL-0-255-13:

“It may well be the case that wine glasses are almost always used with wine – and are, on any normal view, complementary in that sense – but it does not follow that wine and glassware are similar goods for trade mark purposes.”

Whilst on the other hand:

“... it is neither necessary nor sufficient for a finding of similarity that the goods in question must be used together or that they are sold together.”

36. The proprietor admits that its class 12 goods are similar to the applicant’s class 12 goods. Clearly, “body panels for vehicles”, “bodywork (vehicles-)” and “carriage body parts” in the proprietor’s specification will all fall within the broader term “vehicle parts and fittings” in the applicant’s specification. These goods can, therefore, be considered identical on the principle outlined in *Meric*.

37. The proprietor's retail services in class 35 relate to those goods for which the applicant's marks are registered in class 12. There will be overlap in user and trade channels. There will also be a degree of complementarity between the goods and services. I consider these goods and services to be similar to at least a medium degree.

38. The proprietor admits that its class 37 services are similar to the class 37 services in the specification of the First Earlier Mark. "Repair, [...] maintenance services relating to vehicle bodies, vehicle body panels and vehicle body parts" in the proprietor's specification falls within the broader categories of "Maintenance and repair of vehicles" and "repair services relating to vehicles" in the applicant's specification. These services can, therefore, be considered identical on the principle outlined in *Meric*. "Installation [...] services relating to vehicle bodies, vehicle body panels and vehicle body parts" in the proprietor's specification will overlap in user, uses and trade channels with the applicant's services identified above. These services are highly similar.

The average consumer and the nature of the purchasing act

39. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods and services. I must then determine the manner in which the goods and services are likely to be selected by the average consumer. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

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

40. The average consumer for the goods and services is likely to be a member of the general public or a professional in the vehicle industry. The cost of purchases will range from fairly high (in the case of some new vehicle parts) to relatively inexpensive (in the case of some vehicle maintenance services). Nonetheless, given that the consumer will want to ensure that their vehicle is safe and road-worthy and that parts and fittings used are of good quality and appropriate for their specific requirements, even where the cost is not particularly high a number of factors will still be taken into account. Consequently, the level of attention paid during the purchasing process will be at least medium.

41. The goods and services are likely to be obtained from specialist suppliers or their online equivalents. The services are also likely to be purchased from specialist outlets or their online equivalents, following inspection of the premises frontage, website or advertisements (such as flyers, posters and online adverts). The purchasing process is likely to be dominated by visual considerations. However, given that word-of-mouth recommendations may also play a part and consumers may seek advice from sales representatives, I do not discount that there will also be an aural component to the purchase of the goods and services.

Comparison of trade marks

42. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

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

impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

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

44. The respective trade marks are shown below:

Applicant’s trade marks	Proprietor’s trade mark
 <p>(the First Earlier Mark)</p> <p>EASYVAN (the Second Earlier Mark)</p> <p>EASYJET (the Fifth Earlier Mark)</p>	<p>EASY MOVER</p>

45. The proprietor’s mark consists of the ordinary dictionary words EASY MOVER. The overall impression of the marks lies in the combination of these words. The First Earlier Mark consists of the words “easy” and “Coach” which are conjoined. They are presented in a white font on an orange background. The overall impression lies in the combination of these elements, with the words themselves playing a greater role and the font and colour playing a lesser role. The Second Earlier Mark consists of the words EASY and VAN which are, again, conjoined. The overall impression lies in the combination of these words. The Fifth Earlier Mark consists of the words EASY and

JET which are conjoined. The overall impression lies in the combination of these words.

46. Visually, the marks all coincide in the presence of the word EASY. However, they differ in the second word in each mark (MOVER/COACH/VAN/JET). Although the First Earlier Mark is presented in a white font on an orange background, registration of a mark in black and white covers use of that mark in any colour or standard typeface. The proprietor's mark could, therefore, be used in any colour or standard typeface. Consequently, the differences created by the stylisation and colour in the First Earlier Mark are not relevant. I consider the marks to be visually similar to a medium degree.

47. Aurally, the marks will coincide in the pronunciation of the word EASY, which will be given its ordinary English pronunciation. The words VAN, COACH, JET and MOVER will all, of course, have entirely different pronunciations. I consider the marks to be aurally similar to a medium degree.

48. Conceptually, the word EASY in each mark will be given its ordinary dictionary meaning. However, the use of the word EASY is, in itself, likely to be seen as descriptive of the nature of the goods and services sold. The different suffix used in each mark creates a point of conceptual difference, particularly as they are all recognisable dictionary words with different meanings that will be identified by the average consumer. There may be a small degree of conceptual overlap between the word MOVER and the words COACH, VAN and JET to the extent that these vehicles move people or objects from one location to another. However, this overlap is limited. I consider there to be a low to medium degree of conceptual similarity between the marks.

Distinctive character of the earlier trade marks

49. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the CJEU stated that:

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an

overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-2779, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promotion of the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

50. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are descriptive, to low, because they are suggestive or allusive of a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities.

51. The word EASY is descriptive of the nature of the goods and services offered i.e. they are simple or straightforward to use. The words COACH, VAN and JET will also be descriptive or allusive of some of the goods and services offered under the marks (although certainly not all). The inherent distinctive character of these marks lies in the combination of the words as a whole. I consider the marks to have a low to medium degree of inherent distinctive character.

52. The applicant has filed evidence to demonstrate that the distinctive character of the Fifth Earlier Mark has been enhanced through use. The proprietor admits that the mark’s distinctive character has been enhanced through use in respect of some flight services. Given the number of customers served, the revenue generated, and the

market share held by the applicant under the Fifth Earlier Mark, I am satisfied that its distinctive character has been enhanced through use to a high degree in respect of airline services. I am not satisfied that the evidence demonstrates a reputation in respect of any broader services. The applicant has filed no evidence to suggest that the distinctiveness of either the First or Second Earlier Mark have been enhanced through use.

Likelihood of confusion

53. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods and services down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the applicant's earlier marks, the average consumer for the goods and services and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

54. I have found the parties' marks to be visually and aurally similar to a medium degree and conceptually similar to a low to medium degree. I have found the earlier marks to have a low to medium degree of inherent distinctive character. This has been enhanced through use to a high degree in respect of the Fifth Earlier Mark for airline services (although the word "easy" alone has a relatively low degree of distinctiveness and the applicant has not shown that the distinctiveness of this word per se has been enhanced through use, even in respect of flight services). I have identified the average consumer to be a member of the general public or a professional in the vehicle industry, who will select the goods primarily by visual means (although I do not

discount an aural component). I have concluded that at least a medium degree of attention will be paid during the purchasing process for the goods and services. I have found the parties' goods and services to vary from being similar to at least a medium degree, to identical.

55. I consider that the visual, aural and conceptual differences between the marks are sufficient to ensure that they will not be misremembered or mistakenly recalled as each other. I am satisfied that there is no likelihood of direct confusion.

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

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

57. The focus of the applicant's case in this regard is that the proprietor's mark will be mistaken for being a member of its family of easy- prefix marks. In *Il Ponte Finanziaria SpA v OHIM*, Case C-234/06, the CJEU stated:

“62. Whilst it is true that, in the case of opposition to an application for registration of a Community trade mark based on the existence of only one earlier trade mark that is not yet subject to an obligation to use, the assessment of the likelihood of confusion is to be carried by comparing the two marks as

they were registered, the same does not apply where the opposition is based on the existence of several trade marks possessing common characteristics which make it possible for them to be regarded as part of a 'family' or 'series' of marks.

63. The risk that the public might believe that the goods or services in question come from the same undertaking or, as the case may be, from economically-linked undertakings, constitutes a likelihood of confusion within the meaning of Article 8(1)(b) of Regulation No 40/94 (see *Alcon v OHIM*, paragraph 55, and, to that effect, *Canon*, paragraph 29). Where there is a 'family' or '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 trade mark applied for or considers erroneously that that trade mark is part of that family or series of marks.

64. As the Advocate General stated at paragraph 101 of her Opinion, no consumer can be expected, in the absence of use of a sufficient number of trade marks capable of constituting a family or a series, to detect a common element in such a family or series and/or to associate with that family or series another trade mark containing the same common element. Accordingly, in order for there to be a likelihood that the public may be mistaken as to whether the trade mark applied for belongs to a 'family' or 'series', the earlier trade marks which are part of that 'family' or 'series' must be present on the market."

58. The applicant has demonstrated that the Fifth Earlier Mark was on the market at the relevant date but has failed to do so in respect of the First and Second Marks. There is no evidence to support this. In any event, I have seen no evidence to suggest that the public would expect any mark with an EASY- prefix and a descriptive suffix to be connected to the applicant. Even if the applicant had demonstrated that the word EASY- combined with a descriptive suffix would be attributed to the applicant by the public, the word MOVER in the proprietor's mark does not fit with this pattern. It may, at best, be considered allusive, but it is certainly ambiguous as to what is meant by this.

59. Taking this into account, as well as my conclusions set out above, I can see no reason why the average consumer would expect the goods and services to originate from the same or economically linked undertakings. The common element of the marks – EASY – is laudatory. In this case, the distinctive character of the applicant's marks does not lie in the word EASY alone, but in the combination of the words used. I do not consider there to be a likelihood of indirect confusion.

60. The opposition under section 5(2)(b) fails in its entirety.

Section 5(3)

61. I remind myself of the relevant case law as summarised in *Case C-375/97, General Motors*, *Case 252/07, Intel*, *Case C-408/01, Addidas-Salomon*, *Case C-487/07, L'Oreal v Bellure* and *Case C-323/09, Marks and Spencer v Interflora*. The conditions of section 5(3) are cumulative. Firstly, the applicant must show that the earlier mark relied upon has achieved a level of knowledge/reputation amongst a significant part of the public. Secondly, it must be established that the level of reputation and the similarities between the marks will cause the public to make a link between them, in the sense of the earlier mark being brought to mind by the later mark. Thirdly, assuming the first and second conditions have been met, section 5(3) requires that one or more of the types of damage claimed will occur and/or that the contested mark will, without due cause, take unfair advantage of the reputation and/or distinctive character of the reputed mark. It is unnecessary for the purposes of section 5(3) that the goods or services be similar, although the relative distance between them is a factor that must be assessed in deciding whether the public will make a link between the marks.

Reputation

62. In determining whether the applicant has demonstrated a reputation for the goods and services claimed, it is necessary for me to consider whether the mark will be known by a significant part of the public concerned with the goods and services. In reaching this decision, I must take all of the evidence into account including “the

market share held by the trade mark, the intensity, geographical extent and duration of use, and the size of the investment made by the undertaking in promoting it.¹⁴

63. The proprietor admits that the Fifth Earlier Mark has a reputation in relation to flight services. Given the extent of the use made of the Fifth Earlier Mark, the market share held and the number of customers served (albeit I note that not all of those passengers identified will be UK-based customers), I am satisfied that the applicant has a strong reputation for airline services. However, I am not satisfied that the applicant has demonstrated a reputation that goes beyond these services. Whilst Sir Haji-Ioannou states that the Fifth Earlier Mark has also been used for holiday and accommodation services, I have been provided with no evidence to demonstrate the scale or extent of such use.

Link

64. As I noted above, my assessment of whether the public will make the required mental 'link' between the marks must take account of all relevant factors. The factors identified in *Intel* are:

The degree of similarity between the conflicting marks

For the reasons identified above, I consider the marks to be visually and aurally similar to a medium degree and conceptually similar to a low to medium degree.

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

Whilst the Fifth Earlier Mark is registered for identical goods to the proprietor's mark, it is not in these goods that the applicant's reputation lies. The goods and

¹⁴ *General Motors*, Case C-375/97

services for which the proprietor's mark is registered are dissimilar to airline services.

The strength of the earlier mark's reputation

The Fifth Earlier Mark has a strong reputation in the UK.

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

The Fifth Earlier Mark will have a relatively low degree of inherent distinctive character for airline services (with EASY being laudatory and JET being, at best, allusive). However, it has been enhanced to a high degree through use in respect of airline services only.

Whether there is a likelihood of confusion

I have found there to be no likelihood of confusion.

65. In my view, taking into account the visual, aural and conceptual differences between the marks, combined with the different goods and services offered by each party, I do not consider that a significant part of the relevant public will make any link between the marks in use.

66. The application for invalidity under section 5(3) must, therefore, fail in its entirety.

CONCLUSION

67. The application for invalidity fails in its entirety and the Contested Mark will remain registered for all goods and services.

COSTS

68. The proprietor has been successful and is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 2/2016. In the circumstances, I award the proprietor the sum of **£1,300** as a contribution towards the costs of proceedings. The sum is calculated as follows:

Preparing a statement and considering the applicant's statement	£300
Preparing evidence and considering the applicant's evidence	£700
Preparing written submissions in lieu	£300
Total	£1,300

69. I therefore order easyGroup Limited to pay Horton Commercials Limited the sum of £1,300. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.


Dated this 16th day of September 2019

S WILSON

For the Registrar

ANNEX

Under section 5(2)(b), the applicant relies on the following goods and services for which the earlier marks are registered:

<p>The First Earlier Mark</p>  <p>(EUTM no. 15841554)</p>	<p><u>Class 12</u></p> <p>Vehicles; vehicle parts and fittings; apparatus for locomotion by land, air or water.</p> <p><u>Class 37</u></p> <p>Building construction; motor vehicle repair; computer installation services; electrical installation services; maintenance and repair of computer hardware; painting and decorating; cleaning services; vehicle maintenance and repair services; arranging for the maintenance of motor land vehicles; maintenance and repair of land vehicles; maintenance and repair of vehicles; provision of information relating to the maintenance of vehicles; refurbishment of vehicles; repair of accident damage to vehicles; repair of land vehicles; repair of vehicles; repair services relating to vehicles; service stations for the maintenance of vehicles; service stations for the repair of vehicles; servicing of vehicles; washing of vehicles.</p> <p><u>Class 39</u></p> <p>Transport; packaging and storage of goods; travel arrangement; travel information; provision of car parking facilities; transportation of goods, passengers and travelers by air, land, sea and rail; airline and shipping services; airport check-in services; arranging of transportation of goods, passengers and travelers by land and sea; airline services; baggage handling</p>
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	<p>services; cargo handling and freight services; arranging, operating and providing facilities for cruises, tours, excursions and vacations; chartering of aircraft; rental and hire of aircraft, vehicles and boats; chauffeur services; taxi services; bus services; coach transport services; rail services; airport transfer services; airport parking services; aircraft parking services; escorting of travelers; travel agency services; tourist office services; advisory and information services relating to the aforesaid services; information services relating to transportation services, travel information and travel booking services provided on-line from a computer database or the Internet.</p>
<p>The Second Earlier Mark EASYVAN (EUTM no. 12491841)</p>	<p><u>Class 12</u> Vehicles; apparatus for locomotion over land and water; automotive parts and fittings; automotive components namely, parts and fittings for motor land vehicles and for engines; engines; motors; transmissions and transmission shafts; hydraulic cylinders; couplings; bearings; manual and power steering apparatus; vehicle steering columns; vehicle wheels; vehicle wheel hubs; wheel trims; accessories for vehicle wheels; deflectors; vehicle bodies; vehicle doors; vehicle wings; vehicle panels; bumpers; bonnets; dampers; grilles; vehicle horns; vehicle mirrors; mud flaps; roof racks; shock absorbers; springs; suspensions and suspension systems; steering wheels; steering linkages; torsion bars; tow bars; windows and window winding mechanisms; windscreen wipers; brakes; brake pads and brake linings for vehicles; caps for vehicle fuel tanks; engine</p>

mountings; tanks; anti-theft devices; alarm apparatus and installations; accelerator cables; engine dampers; mountings; sumps and valves; gearboxes and gearbox mountings; gearbox filters; parts and fittings for all the aforesaid goods; mirrors; clutches, brake callipers, parts used within; transmission systems; braking systems; engine systems; chassis systems; foot pumps; vehicle covers.

Class 36

Insurance; financial affairs; monetary affairs; real estate; vehicle insurance.

Class 39

Transport; packaging and storage of goods; travel arrangement; travel information; provision of car parking facilities; transportation of goods, passengers and travelers by air, land, sea and rail; airline and shipping services; airport check-in services; arranging of transportation of goods, passengers and travelers by land and sea; airline services; baggage handling services; cargo handling and freight services; arranging, operating and providing facilities for cruises, tours, excursions and vacations; chartering of aircraft; rental and hire of aircraft, vehicles and boats; vehicle hire; car hire; van hire; chauffeur services; taxi services; bus services; coach transport services; rail services; airport transfer services; airport parking services; aircraft parking services; escorting of travelers; travel agency services; tourist office services; advisory and information services relating to the aforesaid services; information services relating to transportation services, travel information and travel

	booking services provided on-line from a computer database or the Internet.
The Third Earlier Mark EASYCAR (EUTM no. 10735553)	<u>Class 39</u> Transport; travel arrangement; travel information; arranging of transportation of goods, passengers and travelers by land; rental and hire of vehicles; travel agency services; information services relating to transportation services, travel information and travel booking services provided on-line from a computer database or the Internet.
The Fourth Earlier Mark EASYBUS (EUTM no. 10735561)	<u>Class 39</u> Transport; travel arrangement; travel information; transportation of goods, passengers and travelers by land; arranging of transportation of goods, passengers and travelers by land; chauffeur services; taxi services; bus services; coach transport services; airport transfer services; escorting of travelers; travel agency services; advisory and information services relating to the aforesaid services; information services relating to transportation services, travel information and travel booking services provided on-line from a computer database or the Internet.
The Fifth Earlier Mark EASYJET (EUTM no. 10584001)	<u>Class 9</u> Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, supervision, life-saving and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers; recording discs; mechanisms for coin operated apparatus; cash registers;

calculating machines, data processing equipment and computers; computer hardware and firmware; computer software; software downloadable from the Internet; downloadable electronic publications; compact discs; computer games software; sunglasses; clothing for protection against injury, accident, irradiation or fire; navigation apparatus for vehicles; educational and teaching apparatus and instruments; electronic, magnetic and optical identity and membership cards; sunvisors; cases for spectacles; parts and fittings for all the aforesaid goods.

Class 12

Vehicles; apparatus for locomotion by land, air or water; motors and engines for land vehicles; airplanes; vehicle body parts and transmissions; vehicle parts, parts for land, air or water locomotion apparatus; bicycles and spare parts thereof (included in this class), golf carts and baby carriages; scooters and spare parts; bike bags.

Class 35

Advertising; business management; business administration; office functions; operation and supervision of loyalty and incentive schemes; advertising services provided via the Internet; production of television and radio advertisements; provision of business information; retail services connected with the sale of food and drink, preparations and substances for use in the care and appearance of the hair, scalp, lips, face, skin, teeth, nails and eyes, cosmetics, non-medicated toilet

preparations, perfumes, fragrances, colognes and scents, soaps and cleaning preparations, shampoos, conditioners, moisturisers, tooth cleaning preparations', depilatory preparations, sun-screening and tanning preparations, anti-perspirants, deodorisers and deodorants, sunglasses, personal stereos, MP3 players, CD players, apparatus for playing music and video recordings, jewelry, stones, watches, clocks, books, magazines, newspapers, stationery, calendars, diaries, purses, umbrellas, parasols briefcases, purses, wallets, pouches and handbags, luggage, suitcases, travelling sets, sports bags, bike bags, backpacks, games, playing cards, gymnastic and sporting articles, gymnastic and sporting articles, scooters; marketing and publicity services; dissemination of advertising, marketing and publicity materials.

Class 36

Insurance; financial services; real estate agency services; banking; issuing of tokens of value; provision of financial information, monetary affairs; foreign exchange services; advice and consultancy relating to the aforesaid services.

Class 39

Transport; packaging and storage of goods; travel arrangement; travel information; provision of car parking facilities; transportation of goods, passengers and travelers by air, land, sea and rail; airline and shipping services; airport check-in services; arranging of transportation of goods, passengers and travelers by land and sea; airline services; baggage handling

	<p>services; cargo handling and freight services; arranging, operating and providing facilities for cruises, tours, excursions and vacations; chartering of aircraft; rental and hire of aircraft, vehicles and boats; chauffeur services; taxi services; bus services; coach services; rail services; airport transfer services; airport parking services; aircraft parking services; escorting of travelers; travel agency services; tourist office services; advisory and information services relating to the aforesaid services; information services relating to transportation services, travel information and travel booking services provided on-line from a computer database or the Internet.</p>
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