

Claim No:

**IN THE HIGH COURT OF JUSTICE**

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

**INTELLECTUAL PROPERTY LIST (ChD)**

**BETWEEN:**

**easyGroup Limited**

**Claimant**

**-and-**

**Finn Keane  
(trading as easyFun)**

**First Defendant**

**Personal Computer Music Ltd**

**Second Defendant**

**Alexander Guy Cook**

**Third Defendant**

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**PARTICULARS OF CLAIM**

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**A. The Claimant**

- 1 The Claimant is a limited company incorporated under the laws of England and Wales with company number 04060333 and registered address at 168 Fulham Road, London SW10 9PR, United Kingdom (“UK”).
- 2 The Claimant is the private investment vehicle of Sir Stelios Haji-Ioannou (“**Sir Stelios**”), the well-known entrepreneur and founder of the airline easyJet (“**easyJet**”).
- 3 The Claimant owns, runs and/or licences numerous brands of a large number of enterprises in a broad range of businesses, all of which trade under a name comprising of the word “easy” followed by a word or words appropriate to their field of operation. Those businesses are referred to herein as “**the Easy Family**”. For the reasons set out further below, the trade of those businesses has led to the Claimant owning the Easy Family of Marks Reputation (as defined at paragraph 26 below). For reasons of proportionality, not all businesses said to comprise the Easy Family are particularised herein.

## B. The Claimant's Marks

4 The Claimant is the registered proprietor of, amongst many others, the following UK trade marks (together, "**the Claimant's Marks**"):

4.1 UK trade mark number UK00002016785 for the word mark "EASYJET", filed 5 April 1995 and registered as of 4 October 1996, in a range of classes ("**the easyJet Mark**") including for the following ("**the easyJet Registered Services**"):

*"Transportation of passengers and travellers by air; airline services"*

4.2 UK trade mark number UK00002253812 for the livery of an easyJet aircraft, filed 22 November 2000 and registered as of 17 May 2002, in a range of classes including the easyJet Registered Services (the **easyJet Livery Mark**):



4.4 UK trade mark number UK00002325440A for the following series of word marks for "EASYMUSIC" (the "**easyMusic Mark**"), filed 4 March 2003 and registered as of 1 October 2004, in a range of classes including for the following:

*"Information relating to entertainment, provided on-line from a computer database or the Internet; entertainment services provided on-line from a computer database or the Internet; entertainment services"*

**easyMusic**

**easyMusic**

easyMusic

EASYMUSIC

5 Copies of the UKIPO register extracts showing each of the Claimant's Marks can be found at **Annex 1** attached hereto.

**C. Reputation and enhanced distinctiveness of the Claimant's Marks**

***easyJet Mark and the easyJet Livery Mark***

6 Since at least 1995 easyJet has provided the easyJet Registered Services throughout the UK (and the EU) under and by reference to the easyJet Mark on a substantial scale. The easyJet Livery Mark has been used extensively by easyJet on the outside of some of its aircraft. The easyJet Mark and the easyJet Livery Mark has been used at all times by or with the consent of the Claimant.

7 In the premises, and by reason of and demonstrated by the facts and matters set out below at paragraph 8, the easyJet Mark and the easyJet Livery Mark benefit from a substantial reputation in the UK in respect of the aforementioned services.

**PARTICULARS**

8 Pending the provision of disclosure and evidence the Claimant will rely upon the following facts and matters:

8.1 easyJet is the largest UK airline by numbers of passengers carried, and the second largest in the EU. Prior to the COVID-19 pandemic, easyJet carried more than 88.5 million passengers across Europe each year, on over 979 routes in 33 countries from 156 airports. In November 2000 easyJet was floated on the London Stock Exchange.

8.2 In the years from 1995 until the year ending 30 December 2020 the following numbers of journeys have been made by passengers on easyJet flights:

<b>Year/Period</b>	<b>Journeys</b>	<b>Year/Period</b>	<b>Journeys</b>
<b>1995</b>	30,000	<b>01.02.20-31.01.11</b>	50.32 million
<b>1996</b>	420,000	<b>01.02.11-31.01.12</b>	55.46 million
<b>1997</b>	1.14 million	<b>01.02.12-31.01.13</b>	59.35 million
<b>1998</b>	1.88 million	<b>01.02.13-21.01.14</b>	61.48 million
<b>1999</b>	3.67 million	<b>01.02.14-31.01.15</b>	65.35 million
<b>2000</b>	6 million	<b>01.02.15-31.01.16</b>	70.08 million
<b>2001</b>	7.66 million	<b>01.02.16-31.01.17</b>	74.92 million
<b>2002</b>	11.4 million	<b>01.02.17-31.01.18</b>	82.05 million
<b>01.02.03-21.01.04</b>	21.26 million	<b>01.02.18-31.01.19</b>	88.71 million
<b>01.02.04-31.01.05</b>	26.12 million	<b>01.02.19-31.01.20</b>	90.84 million
<b>01.02.05-31.01.06</b>	30.53 million	<b>01.02.20-31.01.21</b>	47.94 million
<b>01.02.06-31.01.07</b>	33.93 million	<b>06.04.21-05.04.22</b>	20.40 million
<b>01.02.07-31.01.08</b>	38.42 million	<b>29.09.21-30.09.22</b>	69.7 million
<b>01.02.08-21.01.09</b>	44.66 million	<b>1.10.22-31.03.23</b>	33.1 million
<b>01.02.09-31.01.10</b>	46.38 million		

8.3 From 2004 to 2021 the annual turnover of easyJet has been as follows:

<b>Year/Period</b>	<b>Revenue</b>	<b>Year/Period</b>	<b>Revenue</b>
<b>2004/2005</b>	£1.34 billion	<b>2013/2014</b>	£4.53 billion
<b>2005/2006</b>	£1.62 billion	<b>2014/2015</b>	£4.69 billion
<b>2006/2007</b>	£1.80 billion	<b>2015/2016</b>	£4.67 billion
<b>2007/2008</b>	£2.36 billion	<b>2016/2017</b>	£5.05 billion
<b>2008/2009</b>	£2.67 billion	<b>2017/2018</b>	£5.90 billion
<b>2009/2010</b>	£2.97 billion	<b>2018/2019</b>	£6.38 billion
<b>2010/2011</b>	£3.45 billion	<b>2019/2020</b>	£3 billion
<b>2011/2012</b>	£3.85 billion	<b>2020/2021</b>	£1.45 billion
<b>2012/2013</b>	£4.26 billion	<b>2021/2022</b>	£5.76 billion

8.4 In the years from 2007 to 2020 the sums of money spent by easyJet on marketing have been the following:

<b>Year</b>	<b>Marketing Spend</b>	<b>Year</b>	<b>Marketing Spend</b>
<b>2007</b>	£47 million	<b>2014</b>	£103 million
<b>2008</b>	£45.5 million	<b>2015</b>	£102 million
<b>2009</b>	£38.1 million	<b>2016</b>	£107 million
<b>2010</b>	£35 million	<b>2017</b>	£122 million
<b>2011</b>	£52 million	<b>2018</b>	£143 million
<b>2012</b>	£104 million	<b>2019</b>	£157 million
<b>2013</b>	£101 million	<b>2020</b>	£107 million

8.5 easyJet promotes its business from the website to which the domain names easyjet.co.uk and easyjet.com are pointed (“the easyJet Website”). The

easyjet.co.uk domain was registered before August 1996 and the easyjet.com domain was registered on 25 March 1997. The easyJet Website allows the booking of flights and other travel services, provides information about excursions at flight destinations, and provides other information for tourists. The easyJet Website has received over a billion visits since 2010 and receives more than 100 million page views each month despite the success of easyJet’s mobile ‘app’. Further statistics showing the website traffic to the easyJet Website from 2011 are set out in the table below, which shows the total number of users visiting the easyJet Website and total number of page views:

<b>Year</b>	<b>Users</b>	<b>Page Views</b>
<b>2011</b>	122,774,951	1,290,544,781
<b>2012</b>	181,066,443	1,384,003,741
<b>2013</b>	182,844,400	1,622,460,308
<b>2014</b>	204,695,807	1,832,629,963
<b>2015</b>	208,363,085	1,625,290,017
<b>2016</b>	168,943,682	1,435,611,431
<b>2017</b>	86,917,538	919,258,176

- 8.6 Of those page views between 2011 and 2016, 3,797,300,717 page views were from the UK.
- 8.7 easyJet’s mobile ‘app’ had by 2018 been downloaded more than 28.5 million times.
- 8.8 easyJet was from 1999 until 2007 been the subject of the ITV Studios production “Airline”. Well over 150 episodes following easyJet have been broadcast and the programme has continued to be re-aired on various channels.
- 8.9 easyJet has been listed as a business ‘Superbrand’ as judged by the independent Business Superbrands Council. The Superbrands website ([www.superbrands.com](http://www.superbrands.com)) describes this accolade as follows:

*"Participation in Superbrands is by invitation only, and offered to the most outstanding brands in their field. Attaining Superbrands status strengthens a brands position, adds prestige and reassures consumers and suppliers that they are buying the best brand in its category. A Superbrand offers consumers significant emotional and/or physical advantages over it’s competitors which*

*(consciously or sub-consciously) consumers want, recognise, and are willing to pay a premium for.”*

8.10 From the outset, easyJet has provided advertising and retail services to third parties to a substantial degree, including (a) by enabling third parties to advertise their businesses to its passengers via easyJet’s in-flight magazine “easyCome easyGo”, later renamed “easyRider”; (b) since at least 10 December 2000 by enabling third parties to advertise their businesses via the easyJet.com website; and (c) advertising third party products available for purchase on board flights via its in-flight retail service, in-flight brochures and online at <https://buyonboard.easyjet.com>.

8.11 Between 1998 and 2015, the majority of easyJet aircraft had the following livery:



8.12 In 2015, easyJet amended the aircraft livery as follows, with the aim that 50% of its aircraft would be updated by 2017:



8.13 The majority of the fleet had been updated by 2022 although some aircraft still used the previous livery as shown in paragraph 8.11 above until 2023.

- 9 At all material times the aforesaid services have been provided by easyJet Airline Company Limited (“**EACL**”) (being the company that operates and has at all times operated easyJet), with the consent and licence of the Claimant. In particular, the Claimant granted an exclusive licence to EACL to use the easyJet Mark, under an exclusive licence granted in 2010. Prior to the grant of that licence, the Claimant granted EACL an exclusive licence to use the easyJet Mark under an exclusive licence granted in November 2000.
- 10 Save where otherwise specified, or where the context demands, references herein to acts undertaken by the Claimant include acts undertaken by easyJet and / or EACL.
- 11 By reason of the aforesaid use, the easyJet Mark and the easyJet Livery Mark had, prior to the commencement of the acts complained of herein, come to indicate in the UK to members of the relevant trade and public the services of the Claimant or those of or connected with a member of the Easy Family, or otherwise the subject of some commercial arrangement involving the Easy Family, and none other.

### **easyMusic Mark**

- 12 In 2004 “eaysMusic” was launched as part of the easy Family by a website available at [www.easymusic.com](http://www.easymusic.com) that sold music downloads. Working with a licensee called Wippit the service contained both copyleft and copyright music. Copyleft music, some of it free, was sourced largely from unsigned artists allowing them to showcase their music for free. The copyright service involved re-selling the Wippit catalogue at prices from 25p per song. easyMusic was taking on the market leader Apple iTunes.
- 13 Between 2008 – 2010 [www.easymusic.com](http://www.easymusic.com) offered music CDs for sale from the leading music artists at the time. Between 2010 – 2015 [www.easymusic.com](http://www.easymusic.com) was used to promote the Easy Family. Between 2016 – 2021 it offered karaoke music service in collaboration with the Karaoke Channel.
- 14 Today, easyMusic is a website providing information relating to music entertainment industry, offers other music entertainment services and also, via its partnership with Amazon, offers Amazon Music memberships. Screenshots of the website are available at **Annex 2**.

15 By reason of the aforementioned use, the easyMusic mark benefits from a reputation in the UK in respect of the services at paragraph 4.4.

#### **D. Easy Family of Marks and Easy Family of Marks Reputation**

16 The development of the Easy Family is shown on the website hosted at the domain easyhistory.info. The fourth edition of “easyHistory” was published in November 2022 in printed form and launched via a link to an electronic version at easyhistory.info. A copy of easyHistory is attached at **Annex 3**. For the reasons set out further below, the trade of the Easy Family since at least 1995 has led to the Claimant owning the Easy Family of Marks Reputation, as later defined herein at paragraph 28. The Claimant relies upon all information in easyHistory to support the existence of the Easy Family. For the avoidance of doubt, only the Claimant’s Marks are alleged to be infringed in this claim, but the existence of the Easy Family of Marks Reputation (as defined below at 26) is relied upon as increasing the risk of confusion or damage to the Claimant’s Marks as further set out below.

#### PARTICULARS OF EASY FAMILY OF MARKS REPUTATION

17 The Claimant has since at least 1995 made extensive use within its business and via its licensing arrangements of names that commence with the name “easy” followed by a word or words alluding to the key goods and/or services offered under that name (the “**Easy Family of Marks**”).

18 From around the time of its incorporation, the Claimant has owned the trade mark rights utilised and/or generated by such businesses in the Easy Family. The Claimant relies on the reputation in the Easy Family of Marks, including by way of example the easyJet Mark, the easyJet Livery Mark, the easyMusic Mark (each as particularised above), “easyHotel” and “easyCar”:

18.1 **easyHotel**: Since at least 2005, and with the consent of the Claimant, easyHotel Limited has provided accommodation services under and by reference to the mark “EASYHOTEL”. Such services have been provided on a substantial scale throughout the UK (and the EU).

18.2 In September 2004 the website at [www.easyhotel.com](http://www.easyhotel.com) went live. On 8 June 2005 booking went live for guests wishing to stay at the first easyHotel at 14 Lexham



Gardens, Kensington London W8. The opening of this hotel generated substantial press coverage with articles appearing on 2 August 2005 in a number of publications, including The Times. There are at least 21 hotels operated under the mark “EASYHOTEL” in the UK.

18.3 Very substantial annual turnover has been achieved under the mark “EASYHOTEL” in each year since 2004, as evidenced in the table below:

Year	Revenue	Year	Revenue
2004/2005	£189,031	2012/2013	£2.64 million
2005/2006	£714,452	2013/2014	£3.54 million
2006/2007	£805,594	2014/2015	£5.54 million
2007/2008	£4.99 million	2015/2016	£6.02 million
2008/2009	£5.7 million	2016/2017	£8.42 million
2009/2010	£8.76 million	2017/2018	£11.25 million
2010/2011	£11.16 million	2018/2019	£17.55 million
2011/2012	£1.32 million	2019/2020	£12.16 million

18.4 **easyCar:** Since at least 2000, and with the Claimant’s consent, the services of rental and hire of vehicles and various information services related to car rental have been provided under and by reference to the name and mark “EASYCAR”. Such services have been provided on a substantial scale throughout the UK (and the EU).

18.5 As at the date of issue of this claim, UK customers are able to rent vehicles via the easyCar website at easyCar.com with more than 1,600 third party rental companies at more than 45,000 locations across the world.

18.6 A large number of UK-based customers use easyCar to book car rentals. For example, between 1 September 2022 and 28 February 2023, 13,490 confirmed bookings were made through the easyCar Website by UK customers.

18.7 Very substantial annual turnover has been achieved under the name and mark “EASYCAR” in the UK and EU in each year since 2006. In particular, between 2006 and 2018, the annual turnover of rental and hire of vehicles provided under the name and mark “EASYCAR” was the following:

Year	Revenue	Year	Revenue
2006	£11,760,000	2013	£7,995,000
2007	£20,100,000	2014	£8,795,000

<b>2008</b>	£26,700,000	<b>2015</b>	£16,137,000
<b>2009</b>	£26,200,000	<b>2016</b>	£18,551,000
<b>2010</b>	£23,990,000	<b>2017</b>	£18,312,000
<b>2011</b>	£15,100,000	<b>2018</b>	£15,821,000
<b>2012</b>	£9,560,000		

18.8 In the years from 2006 to 2018, the sums of money spent on marketing the rental and hire of vehicles provided under the name and mark “EASYCAR” have been the following:

<b>Year</b>	<b>Expenditure</b>	<b>Year</b>	<b>Expenditure</b>
<b>2006</b>	£987,000	<b>2013</b>	£348,000
<b>2007</b>	£1,914,000	<b>2014</b>	£757,000
<b>2008</b>	£2,727,000	<b>2015</b>	£624,000
<b>2009</b>	£2,079,000	<b>2016</b>	£1,041,000
<b>2010</b>	£1,828,000	<b>2017</b>	£1,043,000
<b>2011</b>	£600,000	<b>2018</b>	£994,000
<b>2012</b>	£362,000	<b>2019-2022</b>	N/A

19 The Claimant promotes (and has at all material times promoted) the Easy Family via a website at [www.easy.com](http://www.easy.com) (“**the easy.com Website**”). In particular:

19.1 the easy.com Website promotes most if not all of the businesses in the Easy Family, and provides a portal on the internet for them;

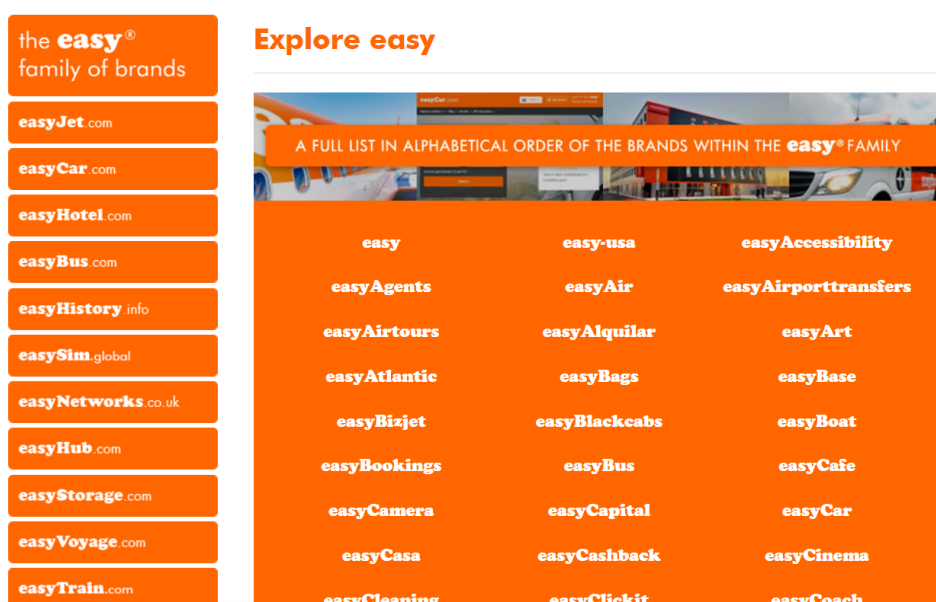
19.2 Since around 2000 until 2020 the easy.com Website continuously offered a free web-based email service to users with an email address in the format [name]@easy.com. From 2020 email users were migrated to an email address with the format [name]@easymail.org.

19.3 the easy.com Website online portal has in some recent years had the following access statistics (where available):

<b>Year</b>	<b>Page Views</b>	<b>Sessions</b>	<b>Users</b>
<b>2006</b>	2,991,047	N/A	N/A
<b>2007</b>	2,821,562	N/A	N/A
<b>2008</b>	2,702,837	N/A	N/A
<b>2009</b>	2,386,312	N/A	N/A
<b>2010</b>	2,483,776	N/A	N/A
<b>2011</b>	2,448,341	N/A	N/A
<b>2012</b>	3,904,709	1,911,146	754,514
<b>2013</b>	3,327,116	1,729,272	676,179

<b>2014</b>	3,128,506	1,717,423	772,055
<b>2015</b>	3,305,865	1,919,335	1,028,415
<b>2016</b>	3,349,887	1,553,990	642,966
<b>2017</b>	3,444,337	1,729,951	737,106
<b>2018</b>	1,712,288	971,755	543,451
<b>2019</b>	828,835	631,097	490,916
<b>2020</b>	989,047	738,610	597,914
<b>2021</b>	670,903	523,026	448,160
<b>2022</b>	589,131	438,715	380,471

20 Each brand within the Easy Family will typically use (i) a lower case 'e' in easy; (ii) no space between 'easy' and the second word; and (iii) a Cooper Black font in white lettering on an orange background (or vice versa) (the “**Orange Livery**”):



21 The Claimant has taken out advertising campaigns in nationwide newspapers to educate the public that the goods and services provided under marks which are part of the Easy Family of Marks are the services of the Claimant or are alternatively licensed by the Claimant. Considering the cost of printing in colour, many of the advertisements used black and white when referring to a brand within the Easy Family.

22 The Claimant has taken out advertising campaigns on London black cabs and on posters at Central London Underground stations. In particular, in 2016 the Claimant undertook poster advertising of a large number of its trade marks. The advertising on London black cabs by the Claimant was evidenced and its impact enhanced by media reports including, in particular, a report published by M2 PressWIRE on or around 26

August 2015 and entitled “*LTA Brings easyGroup to the Streets of London*”, which gave information about several businesses operated or licensed by the Claimant under the Easy Family of Marks.

23 The Claimant has consistently taken a full-page advert in editions of the easyJet in-flight magazine to advertise the Easy Family and the Easy Family of Marks.

24 The Claimant has promoted the goods and services of some members of the Easy Family to customers of other Easy Family businesses, such that those customers have come to understand that businesses operated under a name that commences with the word “easy” followed by a word alluding to the key goods and/or services offered under that name are businesses operated or licensed by the Claimant. This has included in particular the uses set out in the preceding subparagraphs herein and, without limitation, the following uses (see screenshots and other images found at **Annex 4**):

24.1 the services offered by easyHotel have been advertised on the easy.com Website;

24.2 links to the websites of businesses within the Easy Family are provided on the easy.com Website;

24.3 the website of several of the Easy Family businesses, for example the easyCar website homepage, contains a notice informing the reader that the business operating that website is “*part of the ‘easy’ family of brands*”;

24.4 at locations where services of the Easy Family are offered, for example the easyHotel in Croydon, posters advertising other Easy Family businesses are displayed; and

24.5 The “EASYGROUP” name or mark owned by the Claimant is also promoted in connection with all of the businesses connected with the Claimant, in that it appears on stationery used by the Claimant, including on business cards used by Sir Stelios, and through its own website reached via the domain name easy.co.uk.

25 In the premises, and in particular by reason of the use of the marks indicated herein, and the promotion of those marks or some of them as a family of marks as set out above, the Claimant was the owner of the Easy Family of Marks.

26 Further, and in the premises, the Claimant is and has been since at least prior to the commencement of the acts complained of herein, the owner of a substantial reputation throughout the UK in the Easy Family of Marks (“**the Easy Family of Marks Reputation**”).

27 Further the Claimant is and has been since at least prior to the commencement of the acts complained of herein, the owner of a substantial reputation throughout the UK in the Orange Livery.

28 By reason of the Easy Family of Marks Reputation, the reputation attaching to the Orange Livery and the use of the Claimant’s Marks as aforesaid, members of the public recognise that the Claimant’s Marks indicate the Claimant and that each of those marks, or at least two of them, comprise a family of marks containing shared distinctive elements. Any of such shared distinctive elements comprising the Easy Family of Marks Reputation or Orange Livery, when present in a third party mark, are more likely to make the relevant public assume that the third party mark is linked to or is part of that family.

#### **E. The Defendants**

29 The First Defendant, known professionally as easyFun, is a British songwriter and record producer. The First Defendant is in the business of performing live music, song writing and producing songs for other artists (together, the “**easyFun Music Services**”). The First Defendant (in conjunction with the Second Defendant and/or Third Defendant) also sells Goods (as defined below at paragraph 44), namely branded clothing.

30 The Second Defendant is a company incorporated in England & Wales on 17 February 2015 with company registration number 09444803.

31 The Third Defendant is an individual and sole director and shareholder of the Second Defendant.

32 The Second and Third Defendants are in the business of acting as a music representative, promoter and record label called PC Music (“**PC Music**”). The Second and/or Third Defendant's website is at pcmusic.info (the “**PC Music Website**”).

33 In or around 2013, the First Defendant signed with PC Music.

## Use of the easyFun Sign

34 The First Defendant's trading name is and at all material times has been "easyFun" and has been used by the First Defendant in variants including both "EASYFUN" and "easyFun", (together, "**the easyFun Sign**").

35 From a time unknown to the Claimant but at least from the date of issue of this claim the Second Defendant and/or Third Defendant has designed and hosted a website promoting the easyFun Music Services from a sub-domain of the PC Music Website at easyfun.pcmusic.info (the "**easyFun Website**"). The easyFun Website prominently uses the easyFun Sign in the Orange Livery, namely utilising the same font and style as used by easyJet and the other brands within the Easy Family, (the "**easyFun Figurative Sign**") and appears as follows (further screenshots are included at **Annex 5**):



36 On 26 February 2015, PC Music publicly released the First Defendant's music album titled 'Deep Trouble-EP' ("**Deep Trouble-EP**") which comprised the First Defendant's songs. The Deep Trouble-EP was promoted using the following album art, which depicts the aftermath of an air crash, namely an easyJet aircraft with the trade mark "easyJet" replaced with the easyFun Figurative Sign (the "**Aeroplane Artwork**"):



- 37 The Aeroplane Artwork was used by the Defendants or one of them in the course of the provision and/or promotion of the easyFun Music Services until at least 2023.
- 38 The Deep Trouble-EP comprises various songs including 'Full Circle'. The music video for 'Full Circle' (the "**Video**"), which was posted on PC Music's Youtube channel<sup>1</sup> in or around 2015 and which continues to be available (see screenshots taken on 3 November 2023 at **Annex 6**), also features the easyFun Figurative Sign, including as emblazoned on the side of an aircraft:



- 39 The First Defendant also advertised the Deep Trouble-EP via its Facebook page using the easyFun Figurative Sign (see screenshots taken 3 November 2023 at **Annex 7**). The First Defendant's Facebook account continues to display the easyFun Figurative Sign as at the date of issue:

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<sup>1</sup> <https://www.youtube.com/watch?v=fgf7cUHiCj8>

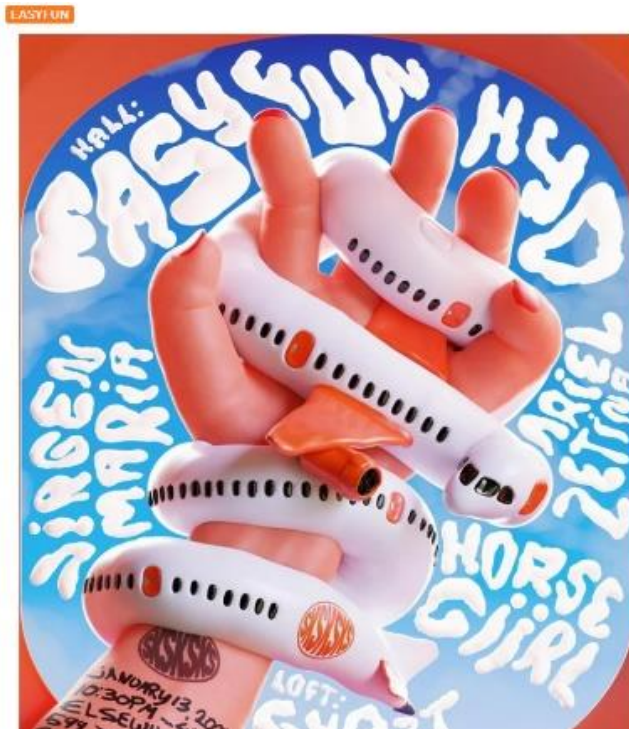


- 40 On 20 July 2016, First Defendant used the easyFun Figurative Sign whilst performing at a live music event in Los Angeles, California (see screenshots of a Youtube video featuring the First Defendant's performance at **Annex 8**):



- 41 Pending disclosure and evidence it will be inferred that the First Defendant has used the easyFun Figurative Sign in the same or similar way at other live events including in the UK.
- 42 In or around January 2023, the First Defendant advertised its easyFun Music Services which it would be performing at the 'sksksks' event in Brooklyn, New York on 13 January 2023. The following poster, which features a sign similar to the easyFun Figurative Sign in the top left-hand corner and a commercial aircraft using the Claimant's distinctive orange colouring similar to the easyJet Livery Mark, was used to promote the event:





- 43 Pending disclosure and evidence it will be inferred that the First Defendant has used a similar poster to the one shown in paragraph 42 above in the same or similar way at other live events including in the UK.
- 44 The First Defendant and/or Second Defendant and/or Third Defendant also promotes and sells merchandise, namely t-shirts, affixed with the easyFun Sign via the PC Music Website (see screenshots taken 3 November 2023 at **Annex 9**) (the "Goods"):



45 The First Defendant continues to use the easyFun Sign in the following stylised format (see **Annex 10** for screenshots of other variations used on the First Defendant's Facebook and Instagram pages):



## **F. Correspondence with the Defendants**

46 On 3 January 2023 the Claimant, via its solicitors, sent a letter before action to the First Defendant. Having received no response, on 1 February 2023 a further letter was sent to the Third Defendant attaching the first letter. That further letter notified the Third Defendant that the contents of the initial letter were also relevant to it and requested that the Third Defendant complied with its contents. The Third Defendant provided no substantive response to the letter of 1 February 2023 but responded by email on 15 February 2023 to confirm that the First Defendant would be responding directly with the Claimant's solicitors. The Third Defendant copied his solicitor into that email and then provided the contact details for the First Defendant's solicitors.

47 The First Defendant responded by email on 20 May 2023 stating the following (amongst others):

*"If your client is annoyed at some of the artwork or images that they think mimics the easyFamily get up, that has always been completely tongue in cheek. It's very obvious that it's meant as a joke and I really struggle to understand why your client has any reason to be concerned about it.*

...

*That said, I obviously don't want to be stuck in a legal dispute with a big company like your client and so I have removed the examples in your letter where I can and will seek to avoid similar artwork in the future."*

48 The Claimant infers from the email referred to above that the First Defendant chose to use the easyFun Sign and the easyFun Figurative Sign deliberately in order to create a link between the First Defendant and the Claimant or its licensee easyJet.

49 Further, despite the First Defendant's email, the items at paragraphs 35, 38, 39 and 44 above remain online via channels under the First Defendant's control as at the date of issue. It also continues to use the easyFun Sign in general, having traded off the Easy Family of Marks Reputation for many years.

#### **G. Trade mark infringement**

50 The First Defendant and/or Second Defendant and/or Third Defendant has from the dates specified in the paragraphs above promoted and/or supplied the easyFun Music Services and Goods and/or offered and/or threatened to supply the same, in the UK under or by reference to the easyFun Sign, including the easyFun Figurative Sign. Such use of the easyFun Sign has been in the course of trade and without the Claimant's consent.

#### ***easyFun Figurative Sign: Infringement of the easyJet, easyJet Livery and easyMusic Marks under section 10(3) Trade Marks Act 1994 (the "Act")***

51 The easyFun Figurative Sign (including without limitation as used alone or on the side of a depiction of an aircraft) is similar to each of the Claimant's Marks. Further, the Claimant's Marks each have a reputation in the UK (as set out above at paragraphs 6-15 respectively and including a reputation in the easyJet Mark used in the Orange Livery). Owing to the said similarity, aforesaid reputations in each of the Claimant's Marks and the easy Family of Marks Reputation, the relevant public will form a link when presented with the aforementioned use of the easyFun Figurative Sign which, being without due cause, has taken and takes unfair advantage of and/or is detrimental to the repute of the Claimant's Marks.

#### **PARTICULARS OF UNFAIR ADVANTAGE**

52 In support of the foregoing allegation of unfair advantage, pending disclosure and/or provision of further information pursuant to CPR Part 18 the Claimant will rely upon the following particulars:

52.1 The reputation owned by the Claimant in each of the Claimant's Marks is substantial and is further enhanced as a result of the Easy Family of Marks Reputation.

- 52.2 Owing to the scale of the reputation in easyJet as at the time the First Defendant commenced and continued trading as easyFun, the First Defendant's correspondence referred to at paragraph 47 above, and owing to the deliberate use of the easyFun Figurative Sign (including without limitation on the Aeroplane Artwork and in the Video), the First Defendant, Second Defendant and/or Third Defendant or one of them are evidently aware of that reputation.
- 52.3 The First Defendant, Second Defendant and/or Third Defendant or one of them evidently chose to use the easyFun Figurative Sign despite being well aware of the easyJet Mark's reputation and/or the Easy Family of Marks Reputation so as to exploit the said reputations and to profit from that exploitation. The Claimant infers that the easyFun Figurative Sign was chosen deliberately to create a link with the easyJet Mark, the easyJet Livery Mark, the easyMusic Mark or one or more of them.
- 52.4 Owing to the strength of the reputation in the aforesaid marks, in particular the easyJet Mark and the easyJet Livery Mark, the First Defendant, Second Defendant and/or Third Defendant or one of them knew and intended that the use of the easyFun Figurative Sign would capture the attention of consumers.
- 52.5 By wrongly creating a link with the Claimant, the Defendants benefit from an association with the Claimant's or its licensees' vast brand recognition, regardless of whether the link was intended to be provocative or humorous. Such benefit is unfair because it arises from the First Defendant's, and/or Second Defendant's and/or Third Defendant's deliberate acts, and because it constitutes riding on the coat tails of the valuable reputation of the easyJet Mark, the easyJet Livery Mark and/or the easyMusic Mark, including the value in their investment, communication and advertising functions, and/or Easy Family of Marks Reputation.

#### PARTICULARS OF DETRIMENT TO REPUTE

- 53 In support of the foregoing allegation of detriment, and the fact of the link(s) identified in paragraph 52 above, pending disclosure and/or provision of further information pursuant to CPR Part 18 the Claimant will rely upon the following particulars:

53.1 Use of the easyFun Figurative Sign in respect of the promotion, advertising and/or sale of the Deep Trouble-EP using the Aeroplane Artwork risked damaging and may have damaged the repute of the Claimant's Marks on account of the use of those signs, being in the Orange Livery, being used to depict a plane crashed into the sea.

53.2 Use of the easyFun Figurative Sign in circumstances in which the Claimant has no control over such use or over the conduct of the First Defendant and/or Second Defendant and/or Third Defendant gives rise to a serious risk of damage to the repute of the Claimant's Marks or one or more of them in the event of negative publicity being generated by the conduct of the First Defendant and/or Second Defendant and/or Third Defendant.

54 In the premises, the First Defendant and/or Second Defendant and/or Third Defendant have infringed the Claimant's Marks and each of them under section 10(3) of the Act.

**Further use of the easyFun Sign: infringement of easyJet and easyMusic Marks pursuant to s.10(3)**

55 Further or in the alternative, the First Defendant has used the easyFun Sign (whether or not in the form of the easyFun Figurative Sign), which is similar to the easyJet and easyMusic Marks in the course of trade without the Claimant's consent, in relation to the easyFun Music Services. The easyJet and easyMusic Marks have a reputation in the UK (as set out above and including a reputation in the easyJet Mark used in the Orange Livery) and owing to the said similarity, reputation and the easy Family of Marks Reputation, the relevant public will form a link when presented with the aforementioned use of the easyFun Sign which without due cause takes unfair advantage of and/or is detrimental to the repute of the Claimant's Marks or one or more of them.

56 Such link is increased as a result of the Defendants' use of the easyFun Figurative Sign in conjunction with the easyFun Sign as set out above.

**PARTICULARS OF UNFAIR ADVANTAGE**

57 Paragraph 52 is repeated, but for the replacement of easyFun Sign for easyFun Figurative Sign.

## PARTICULARS OF DETRIMENT TO REPUTE

58 Paragraph 53 is repeated, but for the replacement of easyFun Sign for easyFun Figurative Sign.

59 Further, use by the Defendants or one of them of the easyFun Sign in circumstances in which the Claimant has no control over the quality or values associated with the Goods risks damaging the reputation of the Claimant's Marks or one or more of them.

60 In the premises, the First Defendant and Second Defendant have infringed the Claimant's Marks and each of them under section 10(3) of the Act.

### **H. Joint liability of the Defendants**

61 Without prejudice to the Claimant's claim that each of the Second Defendant and/or Third Defendant is liable as a primary tortfeasor as particularised above, by reason of paragraphs 30, 33, 35, 38 and 44 above, in particular the fact that the Second Defendant and/or Third Defendant has represented the First Defendant, created graphics for the First Defendant (including, as will be inferred, the easyFun Figurative Sign), hosted the easyFun Website and promoted and/or sold the Goods, at all material times each of the Second Defendant and Third Defendant has acted jointly with the First Defendant in relation to the actions of the First Defendant about which complaint is named herein.

62 Accordingly, pursuant to a common design, the Second Defendant and/or Third Defendant personally authorised, procured, enabled, directed and/or assisted some or all of the acts of infringement and/or passing off complained of herein such that the Second Defendant and/or Third Defendant is jointly and severally liable as a joint tortfeasor in respect of those acts.

### **I. Relief**

63 By reason of the Defendants' acts of infringement as set out above, the Claimant has suffered and/or is likely to suffer loss and damage. The Claimant is entitled to and will seek an enquiry as to damages or, at its option, an account of profits.

64 Unless restrained by the Court, the Defendants threaten and intend to continue such acts of infringement, whereby the Claimant will suffer further loss and damage.

65 The Claimant is not currently aware of all acts of infringement by the Defendants but at trial shall seek to rely on and claim relief in relation to all such acts.

66 As a consequence, the Claimant is not presently able to estimate the financial value of this claim, but considers that it will be substantial. The Claimant will seek a split trial of liability and quantum, with disclosure after the liability phase to enable it to make an informed election between its remedies of an account of profits or an enquiry as to damages. The Claimant undertakes to and will pay the appropriate court fee for the financial relief that it will seek through the later accounts of profits or inquiry as to damages upon the commencement of such inquiry or account of profits.

67 The Claimant is entitled to and claims interest on all sums found to be due to it pursuant to section 35A of the Senior Courts Act 1981, or under the Court's equitable jurisdiction, once any such election as to an account or enquiry has taken place.

#### **AND THE CLAIMANT CLAIMS**

- (1) A declaration that the Claimant's Marks or one or more of them have been infringed by the Defendants.
- (2) A declaration that the Second and Third Defendants are jointly liable with the First Defendant for the First Defendant's infringement.
- (3) An injunction restraining the Defendants howsoever acting, doing, authorising or procuring the following acts or any of them:
  - (a) using the easyFun Figurative Sign or another sign using the Orange Livery;
  - (b) using the easyFun Sign in the course of trade in relation to the Goods or the easyFun Music Services; and,
  - (c) otherwise infringing the Claimant's Marks.
- (4) An order for delivery up or destruction upon oath, at the Claimants' election and at the Defendants' own cost, of all articles in the Defendants' possession, power, custody or control, the keeping and/or disposal of which would breach any element of the injunction at paragraph (3) above.
- (5) At the Claimant's election, an inquiry as to the damage or an account of profits caused by the Defendants' acts of trade mark infringement, with such inquiry or account to

be assessed in accordance with The Intellectual Property (Enforcement, etc.) Regulations 2006 (SI 2006/1028), together with an order for payment of all sums found due to the Claimant.

- (6) Interest applied to all sums found to be due to the Claimant, pursuant to section 35A of the Senior Courts Act 1981 and/or to this Court's inherent jurisdiction, being at such rate and for such period as the Court sees fit.
- (7) Costs.
- (8) Further or other relief.

**STEPHENSON HARWOOD LLP**

**STATEMENT OF TRUTH**

The Claimant believes that the facts stated in these Particulars of Claim are true. The Claimant understands that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth. I am duly authorised by the Claimant to sign this statement.

Signed: 

Full name: Robert Jacob

Position: Partner

Date: 3 November 2023

Served on \_\_\_\_ November 2023 by Stephenson Harwood LLP of 1 Finsbury Circus London EC2M 7SH (reference 01-61-04605), solicitors for the Claimant.