

# EasyGroup proceedings defeated by jurisdictional challenge

31 October 2024

Back in 2023, EasyGroup issued trade mark infringement and passing off proceedings against our Cypriot clients, Easy Forex Trading Limited and Blue Capital Markets Limited (trading as easyMarkets).

EasyGroup claimed its trade marks (such as, EASY, EASYMARKETING, and EASYSERVICES), were being infringed by our clients' use of the word 'Easy' in its online trading and financial services business (despite our clients also holding a registered EU trade mark).

EasyGroup also claimed that it had valuable reputation and goodwill in the easy family brands (such as easyJet, easyHotel, and easyCleaning) within Ireland. These circumstances formed the basis of EasyGroup's trade mark infringement and passing off claims brought against our clients.

When issuing proceedings, EasyGroup designated Ireland as the suitable jurisdiction for the case to be heard and determined, relying on Article 7(2) of Council Regulation (EU) No. 1215/2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters ('Brussels I Recast') and Article 125(5) of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union Trade Mark ('EUTMR').

We challenged EasyGroup's entitlement to issue proceedings against our clients in Ireland. In so doing, we successfully demonstrated that while our clients had a small number of clients based in Ireland, this was simply a consequence of our clients' services and website being accessible in the EU, rather than there being any active *"targeting"* of the Irish market on the part of our clients.

## The court's findings

Mr Justice Twomey analysed several EU and UK cases that had been brought before him by both parties. He considered whether there had been *"targeting"* of Ireland in the context of (1) a trade mark infringement claim and (2) a passing off claim.

In the context of trade mark infringement claims, Mr Justice Twomey considered that in order for an online business to be sued outside of its jurisdiction of domicile, it must be clear that the online business in question has targeted that other Member State rather than there being a supply of a service simply because of the border-free nature of the internet. Further, one sale of goods, or in this instance, provision of services, does not mean that there has been targeting and / or that one does not need to satisfy the test of targeting in order to sue in the relevant Member State. For there to be targeting, there must be *"active conduct"* on the part of the person causing the alleged infringement.

In the context of this case, the following were found not to be evidence of targeting:

1. Where a website recognises a person's IP address, and it automatically provides Irish telephone codes and address options amongst a hundred others;
2. Where an Irish person's IP address is recognised, and the language of the website is then displayed in English;
3. Where the currency on the website is in Euros;
4. Where the website is a .com domain instead of a .cy domain as .com is generally used for international business;
5. The terms and conditions of use set out in the Client Agreement for easyMarkets.com, which lists Ireland amongst the other EU countries in which it provides cross-border services, is nothing more than an acknowledgement that the website is *"accessible"* in Ireland and does not constitute *"active conduct"*; and

6. The EasyMarkets App being capable of being downloaded in Ireland.

In respect of the passing off claim, Mr Justice Twomey held that there needed to be a sufficient "*close connection*" between the defendant and Ireland for the court to conclude there had been targeting and that a harmful event had occurred or may occur in Ireland. The court found that, similar to the trade mark infringement proceedings, there was insufficient targeting to permit the passing off proceedings to be heard in Ireland.

## Conclusion

Mr Justice Twomey's judgment focussed on the concept of "*targeting*" within the EU jurisdiction and in that respect, what constituted "*active conduct*". In doing so, he relied on EU and UK case law to determine the relevance of mere online accessibility versus active market targeting. He concluded that our client's general online presence and incidental servicing of Irish customers did not amount to targeting of the Irish State. Consequently, the court found in favour of our clients and held that EasyGroup were not entitled to proceed with their claim in Ireland.

[Read the judgment](#) →

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