**APPROVED** **[2026] IEHC 512**

**THE HIGH COURT**

**COMMERCIAL**

**Record No.: 2026/172 P**

**Between/**

**EASYGROUP LIMITED and**

**EASYGROUP IP IRELAND LIMITED**

**Plaintiffs**

**-and-**

**EASYFUNDRAISING LIMITED and**

**THE SUPPORT GROUP (UK) LIMITED**

**Defendants**

**JUDGMENT of Mr Justice Rory Mulcahy delivered on 23 July 2026**

## Introduction

**1.** In these proceedings the plaintiffs claim infringement by the defendants of their EU Trade Mark No. 019144557, easyfundraising.ie ("**the EUTM**"). The mark was registered on 10 July 2025.

**2.** The plaintiffs were granted leave to serve notice of the proceedings on the defendants in the United Kingdom by order of this court (O'Donnell J) dated 15 December 2025. Notice of the proceedings was served in accordance with this order on 14 January 2026.

**3.** In their statement of claim, the plaintiffs plead that the since in or about November 2005, the first defendant has conducted its business in the United Kingdom under and used the sign "EASYFUNDRAISING" in the course of its trade. It expressly pleads that since a date in or after November 2005, the first defendant "*has targeted members of the public in the State and in the European Union through the UK Website.*"

**4.** This judgment concerns the defendants' application to set aside service of the notice of proceedings, to have the court decline jurisdiction, and to strike out the proceedings ("**the jurisdiction motion**").

**5.** Though there are a number of disputed issues between the parties, they are agreed that central to this application is the question of whether the plaintiffs have sufficiently established that the targeting alleged in the statement of claim has occurred.

**Background**

**6.** The plaintiffs are part of what they describe as "*the easy family of brands*", a group of companies which was first established in 1994 by Stelios Haji-Ioannou, and which are engaged in a variety of activities including travel, retail and advertising. The companies in the group use compound words comprising '*easy*' together with the product or service being offered as part of their branding, *e.g.* 'easyJet', 'easyHotel'. The first plaintiff ("**easyGroup**") is a UK company and owner of the EUTM. The second plaintiff ("**easyGroup IP**") is an Irish company, a wholly owned subsidiary of easyGroup. Its principal activity is described by the plaintiffs in their affidavit evidence as "*the protection of the easyGroup brand in Ireland*". By licence dated 23 June 2023, easyGroup IP was granted a licence by easyGroup to use the EUTM in Ireland.

**7.** easyGroup registered the EUTM '*easyfundraising.ie*' in July 2025. It established a website which enables sports clubs and organisations to run fundraising campaigns. Since July 2025, the website has enabled members of the public to book and compare travel and accommodation services in a manner which facilitates fundraising for the Irish Red Cross.

**8.** The first defendant ("**EFL**") is the owner of the UK trade mark '*easyfundraising*'. It has operated the website easyfundraising.org.uk ("**the UK website**") since 2005. The second defendant is the sole shareholder of EFL.

**9.** EFL describes its business in the following way in the affidavit grounding this application:

> *"Since in or around 2005 it has operated a website—www.easyfundraising.org.uk—which is a platform for members of the public in the UK ("Supporters") to access various retailers' websites and then buy goods or services from those retailers. Thousands of UK retailers or service providers advertise on or participate in the platform, providing links to their own websites. The Supporters use the platform with the knowledge and intention that a small part of their total spend on the retailers' websites will be remitted by each retailer to EFL, which in turn passes on a portion of that commission to the charity or good cause that the supporter has registered on the platform as their chosen cause.*
>
> *EFL is not a registered charity or not-for-profit organisation. Nor does it pass on all the commission it earns from retailers and service providers to registered charities. It is a for-profit business, with brands paying it a commission when sales are made on their websites from a customer who has come via the UK Website. EFL passes on at least 50% of that commission to the cause(s) customers have chosen to support. EFL also makes money from advertising retailer offers and promotions in emails and on the UK Website. Since its inception, EFL has passed on donations of over £67 million to charities and other good causes in the UK.*"

**10.** In simple terms, charities or organisations, so-called 'good causes', can register with EFL on the UK website, as can retailers. When a customer, described as a 'supporter', purchases goods or services from one of those retailers through the UK website, they can register a good cause or nominate one of the existing good causes. The retailer then makes a payment to EFL, at least 50% of which EFL passes on to the nominated good cause, the balance it retains. There is no additional cost to the supporter for having purchased goods or services via the UK website.

**11.** Prior to the registration of the EUTM the subject of these proceedings, easyGroup commenced trade mark infringement and passing off proceedings against the defendants and others in the United Kingdom in relation to certain of easyGroup's UK registered marks, including 'easyJet', 'easyHotel', 'easyMoney', 'easyGroup' and others. Those proceedings were dismissed in a judgment of the High Court of England and Wales (Fancourt J) dated 11 September 2024. The plaintiffs appealed and the infringement claims were also dismissed by the Court of Appeal in a judgment dated 24 July 2025.

**12.** The EUTM was registered following the dismissal of easyGroup's proceedings by the High Court. The defendants contend, in affidavits filed in this application, that the first plaintiff registered the EUTM (and an Irish trademark which is not the subject of these proceedings) in response to the UK proceedings and in "*full knowledge that EFL was operating the UK Website and carrying on its business using the "easyfundraising" sign*." The defendants allege that the trade marks were, therefore, registered in bad faith. That contention is not the subject of this application but does have some relevance to certain of the arguments advanced by the defendants regarding the entitlement of the plaintiffs to maintain these proceedings.

**Application for service out**

**13.** On 15 December 2025, the plaintiffs sought and obtained leave to serve notice of the proceedings on the defendants. The order was made pursuant to Order 11, rule (1)(f) and 1(g) of the Rules of the Superior Courts ("**the Rules**"). It was grounded on an affidavit of the solicitor for easyGroup which stated that the plaintiffs "*assert*" that the defendants conduct their business in the State and the EU, and "*also rely on the fact that the Intended Defendants have targeted members of the public in the State and within the European Union by virtue of the services provided on the UK Website.*" Detailed particulars of that allegation were not set out in the affidavit, although correspondence exchanged between the parties containing the allegations was exhibited.

**The pleadings**

**14.** The statement of claim, delivered with the notice of summons on 14 January 2026, includes particulars of the allegations of targeting by EFL. In substance, the claim of targeting as set out in the statement of claim is based on the contention that members of the public could buy products and services provided by Irish businesses through the UK website. A list of businesses is included. It is also pleaded that members of the public in the State have been targeted because the UK website enables fundraising by Irish charities. A list of charities is included.

**15.** The defendants entered a conditional appearance on 5 February 2026 for the sole purpose of contesting jurisdiction. The proceedings were entered in the Commercial List of the High Court on 16 February 2026 on the application of the defendants. The defendants issued the jurisdiction motion on 2 March 2026 in accordance with the directions of the Commercial Court.

## The jurisdiction motion

**16.** The defendants' motion is grounded on the affidavit of James Moir, chief executive officer of EFL. His affidavit sets out the background to the registration of the EUTM as described above. He includes some material from a judgment of the English courts in unrelated proceedings which is critical of easyGroup's principal, Mr Haji-Ioannou. It is difficult to see what relevance this material could have to the jurisdiction motion and easyGroup's criticism that the material was improperly included in order to negatively colour the court's perception of easyGroup is well made. I have accordingly discounted that material. easyGroup's criticism is somewhat undermined by its own complaints in its affidavits about EFL's business model, which also have no relevance to the jurisdiction motion. I have, likewise, disregarded that material.

**17.** Mr Moir sets out in his affidavit the factual basis upon which he says that the court should conclude that the infringing behaviour alleged (which he denies) did not take place in the State or the EU. Since the allegation is that EFL targets members of the public in the State and EU through its website, he identifies various features of EFL's website which he claims show that it is targeted only at members of the public in the United Kingdom. Mr Moir delivered two further affidavits in which he addressed the plaintiffs' response to his grounding affidavit.

**18.** The plaintiffs' evidence is contained in two affidavits of Anthony Anderson, a "*consultant and previous Marketing Director*" for easyGroup. His affidavits set out the basis upon which the plaintiffs contend that there has been targeting of members of the public in the State and the EU.

**19.** I will address the competing claims and the evidence to support them below when analysing whether the plaintiffs have met the jurisdictional threshold for these proceedings. First, I propose to set out the relevant legal framework for determining the jurisdiction motion. I will then address the other issues in dispute between the parties, which, as will be seen, do not affect the issue to be determined on this application. I will then turn to the central issue: is there sufficient evidence of targeting in the State or EU to confer this court with jurisdiction to hear these proceedings?

**The EU Trade Mark Regulation**

**20.** The dispute solely concerns alleged infringement of an EU trade mark. The parties are agreed that the proceedings are, accordingly, governed by Regulation (EU) 2017/1001 on the European Union trade mark, the EU Trade Mark Regulation ("**EUTMR**"). This arises by reason of Article 124 of the EUTMR which gives "*EU trade mark courts*" exclusive jurisdiction over such disputes:

> *The EU trade mark courts shall have exclusive jurisdiction:*
> *(a) for all infringement actions and — if they are permitted under national law — actions in respect of threatened infringement relating to EU trade marks;*
> *(b) for actions for declaration of non-infringement, if they are permitted under national law;*
> *(c) for all actions brought as a result of acts referred to in Article 11(2);*
> *(d) for counterclaims for revocation or for a declaration of invalidity of the EU trade mark pursuant to Article 128.*

**21.** Article 123 of the EUTMR requires member states to designate courts to perform the functions assigned by the EUTMR. The High Court is an EU trade mark court for the purpose of the EUTMR, having been so designated by SI 229/2000 in accordance with the predecessor to the EUTMR, Council Regulation (EC) No. 40/94, which was subsequently codified in 2009 as Regulation (EC) No 207/2009.

**22.** Article 125 of the EUTMR determines which Member State has jurisdiction to hear a trade mark dispute:

*1. Subject to the provisions of this Regulation as well as to any provisions of Regulation (EU) No 1215/2012 applicable by virtue of Article 122, proceedings in respect of the actions and claims referred to in Article 124 shall be brought in the courts of the Member State in which the defendant is domiciled or, if he is not domiciled in any of the Member States, in which he has an establishment.*

*2. If the defendant is neither domiciled nor has an establishment in any of the Member States, such proceedings shall be brought in the courts of the Member State in which the plaintiff is domiciled or, if he is not domiciled in any of the Member States, in which he has an establishment.*

…

*5. Proceedings in respect of the actions and claims referred to in Article 124, with the exception of actions for a declaration of non-infringement of an EU trade mark, may also be brought in the courts of the Member State in which the act of infringement has been committed or threatened, or in which an act referred to in Article 11(2) has been committed.*

**23.** Pursuant to Articles 125(1) and (2), jurisdiction is determined by reference to the place of domicile of the plaintiff and defendant respectively. Under Article 125(5) jurisdiction is determined by reference to where the infringement takes place.

**24.** Importantly, Article 126 defines the extent of the jurisdiction:

*1. An EU trade mark court whose jurisdiction is based on Article 125(1) to (4) shall have jurisdiction in respect of:*

*(a) acts of infringement committed or threatened within the territory of any of the Member States;*

*(b) acts referred to in Article 11(2) committed within the territory of any of the Member States.*

*2. An EU trade mark court whose jurisdiction is based on Article 125(5) shall have jurisdiction only in respect of acts committed or threatened within the territory of the Member State in which that court is situated.*

**25.** Accordingly, an EU trade mark court of a member state will have jurisdiction over acts of infringement committed or threatened anywhere in the Union if either the plaintiff or the defendant is domiciled or has an establishment in that court's jurisdiction, per Article 126(1). However, where neither the plaintiff or defendant is domiciled or has an establishment in a member state, the EU trade mark court of that member state will only have jurisdiction over acts of infringement which have occurred or been threatened in that member state.

**26.** The plaintiffs assert that the Irish courts have jurisdiction pursuant to Article 125(2) on the basis that both plaintiffs are established within the jurisdiction. The defendants dispute that the plaintiffs are established in the State. Separately, the plaintiffs contend that the Irish courts have jurisdiction pursuant to Article 125(5) because the alleged infringement is taking place in the State.

**27.** The plaintiffs accept, however, that irrespective of whether jurisdiction is conferred by Article 125(2) or 125(5), in order for an EU trade mark court to have jurisdiction, there must be an act of infringement. Therefore, it must show to the necessary standard that there has been targeting of members of the public within the EU in order to show that there has been an act of infringement such as to confer jurisdiction under the EUTMR. As a result, the only practical significance to the question of whether jurisdiction is conferred by Article 125(2) or 125(5) is that the plaintiffs can establish jurisdiction by showing sufficient evidence of an infringement anywhere within the EU to establish jurisdiction pursuant to Article 125(2). They must show evidence of an infringement, *i.e.* of targeting, within Ireland to establish jurisdiction pursuant to Article 125(5). As we will see, the evidence relied on by the plaintiffs relates almost exclusively to Ireland.

**Relevant case law**

**28.** The targeting relied on by the plaintiffs to establish jurisdiction is solely concerned with EFL's online activity, the UK website and its app ("**the EFL app**"). There have been a number of decisions addressing the question of whether online activity can be regarded as being targeted to the public in a particular jurisdiction. As the plaintiffs acknowledge, the cases unequivocally establish that mere availability or accessibility of a website (or an app) in a jurisdiction is not sufficient.

**29.** *L'Oreal SA and Ors v eBay International AG and Ors* [2012] Bus LR 1369 (Case C-324/09) was a case concerning the sale of counterfeit perfumes bearing the claimants' trade marks. The claimants brought proceedings against individual sellers and also the first three defendants, the operators of the online market place where counterfeit goods had been sold. The High Court of England and Wales held that a number of the individual sellers had either infringed the trade mark or sold counterfeit goods. In relation to the online market place, it referred a number of questions to the CJEU.

**30.** The seventh question referred was whether it was sufficient that an offer for sale was "*targeted at consumers located in the territory covered by the trade mark*" for the owner of a trade mark to be able to prevent the online sale of good bearing that trade mark. The CJEU said that it was (at p. 1419). However, mere *accessibility* was not sufficient:

> "*64 It must, however, be made clear that the mere fact that a website is accessible from the territory covered by the trade mark is not a sufficient basis for concluding that the offers for sale displayed there are targeted at consumers in that territory: see, by analogy,* Pammer v Reederei Karl Schlüter GmbH & Co KG *(Joined Cases C-585/08 and C-144/09) [2012] Bus LR 972, para 69. Indeed, if the fact that an online marketplace is accessible from that territory were sufficient for the advertisements displayed there to be within the scope of Directive 89/104 and Regulation No 40/94, websites and advertisements which, although obviously targeted solely at consumers in third states, are nevertheless technically accessible from EU territory would wrongly be subject to EU law.*

*65 It therefore falls to the national courts to assess on a case by case basis whether there are any relevant factors on the basis of which it may be concluded that an offer for sale, displayed on an online marketplace accessible from the territory covered by the trade mark, is targeted at consumers in that territory. When the offer for sale is accompanied by details of the geographic areas to which the seller is willing to dispatch the product, that type of detail is of particular importance in the said assessment.*

*66 In the case before the referring court, the website with the address www.ebay.co.uk appears, in the absence of any evidence to the contrary, to be targeted at consumers in the territory covered by the national and Community trade marks relied on; the offers for sale on that website which form the subject matter of the main proceedings therefore fall within the scope of the EU rules on intellectual property.*

*67 Accordingly, the answer to the seventh question referred is that where goods located in a third state, which bear a trade mark registered in a member state of the EU or a Community trade mark and have not previously been put on the market in the EEA or, in the case of a Community trade mark, in the EU, (i) are sold by an economic operator through an online marketplace without the consent of the trade mark proprietor to a consumer located in the territory covered by the trade mark or (ii) are offered for sale or advertised on such a marketplace targeted at consumers located in that territory, the trade mark proprietor may prevent that sale, offer for sale or advertising by virtue of the rules set out in article 5 of Directive 89/104 or in article 9 of Regulation No 40/94. It is the task of the national courts to assess on a case by case basis whether relevant factors exist, on the basis of which it may be concluded that an offer for sale or an advertisement displayed on an online marketplace accessible from the territory covered by the trade mark is targeted at consumers in that territory.*"

**31.** The questions referred in *L'Oreal* were referred in substantive infringement proceedings. In Case C-172/18, *AMS Neve v Heritage Audio SL*, the CJEU revisited the issue of targeting in the context of a challenge to jurisdiction. The defendants were alleged to have offered goods bearing the plaintiffs' EUTM for sale to consumers in the UK via online sources. The plaintiffs issued proceedings in the UK, and the defendants challenged jurisdiction. The High Court refused jurisdiction to determine the EUTM claim. The plaintiffs appealed and the Court of Appeal referred questions to the CJEU including querying the criteria to be taken into account in determining jurisdiction.

**32.** The Advocate General's opinion gives some guidance (at §87 – §98) of factors which might indicate targeting. He indicated that the fact "*that a website is aimed at the consumers and traders of a Member State must be apparent, straight away, from the content of that website*".

**33.** He identified a number of factors of "*particular importance*" (at §89):

> "*… the fact that an offer and an advertisement refer expressly to the public of a Member State, that they are available on a website with a country-specific top-level domain of that Member State, that the prices are given in the national currency or that telephone numbers on such a website contain the national prefix of the State concerned…*"

**34.** He stressed that those factors were neither "*exhaustive or exclusive*".

**35.** The fact that the offer for sales provides details concerning where the seller was prepared to dispatch goods also played "*a significant role*", though a general indication would not enable the targeted audience to be identified. The fact that the website was written in a language that was widely understood within the Union was unlikely to be of particular importance.

**36.** He cautioned that the assessment for the purpose of determining jurisdiction was not the same as the assessment of the substance of the claim (at §93):

> "*Furthermore, the determination of jurisdiction must not be confused with an examination of the substance of the case at issue. The determination of jurisdiction on the basis of Regulation No 207/2009 should neither take the place of the examination as to whether an EU trade mark has actually been infringed, nor prejudge the outcome of that examination.*"

**37.** In the CJEU's judgment, it endorsed the requirement stated in *L'Oreal*, that the advertising and offers be "*directed*" to the member state in which the claim is being brought. It stated (at §46):

> “*In accordance with that case-law and the considerations set out in paragraphs 40 to 42 of the present judgment, an EU trade mark court before which an infringement action on the basis of Article 97(5) of Regulation No 207/2009 is brought must, when it is called upon to review its jurisdiction to give a ruling on whether there is an infringement in the territory of the Member State where that court is situated, be satisfied that the acts allegedly committed by the defendant were committed in that territory*.”

**38.** The Court confirmed that the critical issue is the targeting itself, not the result of the targeting (at §54).

> “*... acts must be held to have been ‘committed’ in the territory where they can be classified as advertising or as offers for sale, namely where their commercial content has in fact been made accessible to the consumers and traders to whom it was directed. Whether the result of that advertising and those offers for sale was that, thereafter, the defendant’s products were purchased is, however, irrelevant.*”

**39.** Case C-104/22, *Lannen MCE Oy v Berky GmbH* also concerned a challenge to jurisdiction, this time to the jurisdiction of Finnish courts, which referred questions to the CJEU for determination. The claimant manufactured an amphibious dredger which it marketed under the EUTM ‘Watermaster’. It alleged that the defendants had infringed its trade mark in Finland through the use of paid-referencing on an internet search engine in Finland, by which searches for the term ‘Watermaster’ on that search engine caused advertisements for the defendants’ products to be displayed.

**40.** The Court noted that acts of infringement would only have occurred in Finland to the extent that the display of those advertisements was directed at consumers or traders located in Finland.

**41.** The Court reiterated the point made by the Advocate General in *AMS Neve* that the examination of that question for the purpose of determining jurisdiction was not the same as the examination of the substance of the action:

"*38. It would be excessive to require the court seised of an infringement action to carry out, at the stage of determining whether it has international jurisdiction under article 125(5) of Regulation 2017/1001, a detailed examination of those complex matters of fact and of law.*

*39. Consequently, evidence which gives rise to a reasonable presumption that acts of infringement may have been committed or threatened on the territory of a member state is sufficient for the EU trade mark court of that member state to have jurisdiction under article 125(5) of Regulation 2017/1001.*"

**42.** The court referred to the entitlement to bring an action if the display of content is "*even if only potentially*" directed at consumers or traders in a member state (at §42). It stressed that the infringement must relate to "*active conduct*" on the part of the person causing the infringement (at §40).

**43.** At §46, the court referred to various indicia of targeting:

"*In that connection, as regards the interpretation of article 17(1)(c) of Regulation No 1215/2012, the court has held that various indicia are capable of supporting the conclusion that the trader's activities are directed to the member state of the consumer's domicile, namely the international nature of the activity, use of a language or a currency other than the language or currency generally used in the member state in which the trader is established, mention of telephone numbers with an international code, outlay of expenditure on an internet referencing service in order to facilitate access to the trader's site or that of its intermediary by consumers domiciled in other member states, use of a top-level domain name other than that of the member state in which the trader is established, and mention of an international clientele composed of customers domiciled in various member states (see, by analogy,* Pammer v Reederei Karl Schlüter GmbH & Co KG *(Joined Cases C-585/08 and C-144/09) [2012] Bus LR 972, para 93 ).*"

**44.** The Irish courts have applied the foregoing jurisprudence in assessing jurisdiction pursuant to the EUTMR in a case regarding the alleged supply of services in breach of EUTMs, *easyGroup Limited v Easy Forex* [2024] IEHC 590, a case also involving the plaintiffs. In that case, the defendant, based in Cyprus, operated an online trading platform. It had over 11,000 worldwide users, including 16 in Ireland. The plaintiffs claimed that the use by the defendant of the name '*easymarkets*' infringed the plaintiffs' EUTMs, including '*easymarketing'*.

**45.** The High Court (Twomey J) referred to the decisions in *AMS Neve* and *L'Oreal* considered above. It also referred to the decision of the UK Supreme Court in *Lifestyle Equities CV v Amazon UK Services* [2024] UKSC 8 in which the UK Supreme Court indicated (at §46) that a "*multi-factorial assessment*" was required. Having carried out its own multi-factorial assessment, the court concluded that there was no targeting of Irish consumers and declined jurisdiction. In so doing, the court rejected the idea that evidence of acquisition of the relevant service in the State was sufficient to establish that there had been targeting of members of the public in the State.

**46.** The following principles can be derived from the authorities:

- Mere accessibility of a website in a jurisdiction is not enough to establish targeting; there must be evidence that the website, advertisement or offer was directed at consumers in that jurisdiction. (*L'Oréal*)
- Targeting is assessed on a case-by-case basis by reference to all relevant factors; there is no single determinative criterion. (*L'Oréal*)
- For jurisdictional purposes, the focus is on whether the advertising or offer was directed at consumers in the relevant territory, not on whether any resulting sale actually occurred there. (*AMS Neve*)
- The act of infringement is committed where the commercial content is made accessible to the consumers or traders to whom it is directed. (*AMS Neve*)
- Jurisdictional analysis must be kept distinct from determining the substantive merits of the infringement claim. (*AMS Neve*)
- At the jurisdiction stage, a claimant need not prove infringement conclusively; evidence giving rise to a reasonable presumption that infringement may have occurred is sufficient. (*Lannen*)
- Targeting requires active conduct by the alleged infringer; passive accessibility alone is insufficient. (*Lannen*)

- Targeting is determined through a multi-factorial assessment rather than by any single factor. (*Lifestyle Equities CV* applied in *easyGroup v Easy Forex*)
- The court must consider the overall impression created by the website and surrounding commercial activity when deciding whether consumers in a particular jurisdiction were targeted. (*easyGroup Ltd v Easy Forex*)

**Standard of proof**

**47.** Although the parties were broadly agreed that the foregoing set out the relevant principles applicable to this motion, there was nonetheless some dispute regarding the standard of proof which a plaintiff or claimant had to meet in order to satisfy the jurisdictional threshold to bring a claim for infringement of an EU trade mark. In particular, the defendants argued, by reference to the Supreme Court decision in *Ryanair Ltd v Billigfluege.de GmbH* [2015] IESC 11, that the plaintiffs must establish on the balance of probabilities that there had been targeting of members of the public either in this jurisdiction or in the EU.

**48.** The *Billigfluege* case concerned allegations of screen-scraping by the defendant. Ryanair relied on a jurisdiction clause in its terms and conditions which conferred jurisdiction on the Irish courts. Billigfluege contested jurisdiction contending that it had not agreed to the clause.

**49.** The Supreme Court characterised the jurisdiction clause as an exception to the general rule that a defendant should be sued in the jurisdiction in which it was domiciled and should, therefore, be strictly construed. The Court concluded that legal certainty required that the exception must be proved to the ordinary civil standard, *i.e.* the balance of probabilities. The Court relied, in particular, on the fact that a determination on whether the jurisdiction clause applied would finally determine that issue:

> "*It is in this context that the plaintiffs submit that the court should apply a test of a 'fair arguable case' leaving the resolution of any disputes to the trial of the action. That approach needs to be applied with special circumspection in a case where the issue in contention is whether the court can take upon itself jurisdiction over a foreign person or corporation. Tests similarly worded are adopted by the courts in deciding whether*

*or not to grant some forms of interlocutory relief, specifically injunctions, or whether to grant leave to apply for judicial review. But, in those cases, the position of the opposing party is not irrevocably affected. He may succeed at the trial of an action, though an interlocutory injunction has been granted against him, and he may defeat the substantive application for judicial review. This case is different. If the court grants leave to effect service out of the jurisdiction, it asserts that it has jurisdiction. The foreign defendant is required to submit to that jurisdiction and fails to do so at his peril. In particular, if the court declines to set aside an order for service, that ends the dispute about jurisdiction. There is no later opportunity to re-open the matter.*"

**50.** The plaintiffs argue that *Billigfluege* concerned an exception to the general rule and therefore different considerations apply in a case where they are simply relying on one of the general rules regarding jurisdiction in the EUTMR.

**51.** The issue in dispute in this application is whether there has been targeting by the defendants of members of the public in the EU or Ireland. It is clear from the authorities that that is an issue which should *not* be finally determined at the stage of determining jurisdiction, and that the assessment of that issue for the purpose of such a determination should not be confused with the substantive assessment of those issues (see, for example, *Lannen* at §38).

**52.** Accordingly, though this motion may finally determine the question of jurisdiction, at least in this court, it will not finally determine the question of whether there has been targeting, proof of which is a necessary element of any successful infringement action.

**53.** In the circumstances, I cannot conclude that the plaintiffs must satisfy a requirement to show on the balance of probabilities that there has been targeting, rather, it must show sufficient evidence to give rise to a reasonable presumption that there has been targeting.

**54.** The defendants contend that even that threshold is higher than the "*good arguable case*". It is difficult to discern any meaningful difference between the two. I will use the language of the CJEU judgments in this judgment, but in substance, the plaintiffs must establish at this stage a case of targeting which is reasonably capable of being proven.

## The defendants' procedural objections

**55.** In their legal submissions, the defendants identify two procedural objections to the plaintiffs' claim. First, they contend that the application for leave to serve notice of the proceedings was made under the wrong rule of court. The *ex parte* application for leave to serve the proceedings out of the jurisdiction was made pursuant to Order 11, rule (1)(f) and (g) of the Rules. It should, argue the defendants, have been made pursuant to Order 11, rule 1(v).

**56.** Order 11, rule 1 provides, *inter alia*, as follows:

> *1. Save as otherwise provided for in Orders 11A, 11B, 11C, 11D and 11E, service out of the jurisdiction of an originating summons or notice of an originating summons may be allowed by the Court whenever:*
>
> *…*
>
> *(f) the action is founded on a tort committed within the jurisdiction;*
>
> *(g) any injunction is sought as to anything to be done within the jurisdiction, or any nuisance or other wrong within the jurisdiction is sought to be prevented or removed, whether damages are or are not also sought in respect thereof;*
>
> *…*
>
> *(v) jurisdiction to award relief against a person out of the jurisdiction is given to the Court by any enactment or rule of law not previously mentioned in this sub-rule or the exercise of extra-territorial jurisdiction is otherwise permissible under Article 29.8 of the Constitution as being in accordance with the generally recognised principles of international law…*

**57.** The defendants contend that Order 11, rule (1)(v) was introduced in 2024 and was "*clearly directed at situations such as this one*". In circumstances, where the dispute is governed by the EUTMR, the defendants argue that the plaintiffs were not entitled to invoke any other rule in seeking leave to serve notice of the proceedings.

**58.** The plaintiffs reject the complaint as without foundation. They point out that if it is correct, it was not possible, in accordance with the rules, to seek an injunction restraining infringement of an EU trade mark prior to 2024, a proposition which they state is plainly untenable. They refer to a decision of the courts of England and Wales to the effect that proceedings seeking an injunction to restrain an infringement of a trade mark fell within the equivalent of Order 11, rule (1)(g) (*Re Burland's Trade Mark (1889) 41 Ch. D. 542*). In addition, they refer to the decision in *Vodafone Gmbh v International Licensing and Intellectual Ventures II LLC* [2016] IEHC 321, a case concerning the licensing of patents, in which the court (Barrett J) confirmed that the reference to 'tort' in Order 11, rule 1(f) is simply a reference to that term in its ordinary meaning, as a civil wrong. Infringement of a trade mark is, say the plaintiffs, clearly a civil wrong.

**59.** I do not agree that the plaintiffs were required to invoke Order 11, rule 1(v) in order to seek leave to serve the proceedings. There is nothing within the Rules of Court or the EUTMR which so provides, and the provisions of Order 11, rules 1(g) and 1(f) amply characterise the plaintiffs' claim in these proceedings.

**60.** Even if I am wrong about that, it is obvious that the court could and would cure any defect in service by deeming service good if the defendants' only complaint was that the plaintiffs should have invoked a different sub-rule of Order 11.

**61.** To be fair to the defendants, their argument that rule 1(v) was the appropriate sub-rule reflects a potentially more substantial point, regarding the threshold that is required to be met when seeking leave to serve out of the jurisdiction. As the plaintiffs point out in their submissions, the 'normal' threshold for the grant of leave to serve proceedings out of the jurisdiction is a low one, an arguable case, one which is "*reasonably capable of being proven*" (see, for instance, *Trafalgar Developments Ltd v Mazepin* [2022] IEHC 167).

**62.** However, as appears from the above, in the case of EU trade mark infringement, the court is required to ask itself a different question, whether the evidence gives rise to a "*reasonable presumption*" that acts of infringement may have been committed. The defendants, perhaps, apprehended that by invoking rules 1(f) and 1(g), the plaintiffs would seek to argue that they could avoid addressing that question. However, the plaintiffs have expressly accepted that it must meet the threshold identified in the EU authorities and in *easyGroup v Easy Forex*. Though there may be a dispute regarding how *that* threshold should be calibrated, the plaintiffs do not advance any argument that their invocation of Order 11, rules 1(f) and 1(g) rather than 1(v) has any bearing on the evidential threshold they are required to meet. In any event, as I have concluded above, there is little if any difference between those thresholds.

**63.** The other procedural objection is flagged above and relates to the question of whether the second plaintiff is established in the State, and therefore, the question of whether jurisdiction is to be determined by reference to Article 125(2) or 125(5) of the EUTMR.

**64.** In Case C-617/15, *Hummel Holdings*, the CJEU considered the question of what constitutes an establishment for the purpose of the predecessor to the EUTMR. The particular question at issue was whether the existence of a subsidiary in a member state was an establishment of the parent company in that state. The Court concluded that a subsidiary was an establishment of a parent company, irrespective of the legal status of the subsidiary, where it exhibited certain characteristics (at §37):

> "*It follows from such a broad interpretation that there must be visible signs enabling the existence of an 'establishment' within the meaning of Article 97(1) of Regulation No 207/2009 to be easily recognised. As the Advocate General stated in point 52 of his Opinion, the existence of an establishment thus requires a certain real and stable presence, from which commercial activity is pursued, as manifested by the presence of personnel and material equipment. In addition, that establishment must have the appearance of permanency to the outside world, such as the extension of a parent body…*"

**65.** The defendants argue that the second plaintiff has "*no appearance of permanency*" in Ireland. It says that it appears to have no employees or material assets. The address of its registered office is the address of its solicitor, as was its previous registered office. In its abridged financial statements for the year ended 30 September 2025, its principal activity is described as the protection of the easy brand in Ireland. However, the same financial statements value easyGroup IP's assets at one euro. As easyGroup IP is a licensee of the EUTM, the defendants say that easyGroup IP appears to have attributed a value of one euro to that licence.

**66.** The defendants contend that because easyGroup IP has no appearance of permanency, it is not itself an establishment, and therefore cannot be an establishment of its parent company easyGroup. Neither plaintiff, therefore, has a right of action under Article 125(2) of the EUTMR.

**67.** The plaintiffs respond that the defendants have misunderstood the legal position. Since easyGroup IP is *domiciled* in Ireland, it necessarily has a right of action here pursuant to Article 125(2) of the EUTMR, subject to satisfying other jurisdictional criteria. In my view, this must be correct and follows from a plain reading of that provision.

**68.** The more problematic issue, as identified in the leading text on the EUTMR, *EU Trade Mark Regulation (EUTMR), Brussels Commentary,* ed. by Hildebrandt and Sosnitza (2023) is the concept of establishment and, in particular, whether easyGroup IP can be regarded as an establishment of easyGroup for the purpose of Article 125(2).

**69.** In Mr Anderson's first affidavit, he says that easyGroup IP functions to protect the intellectual property of the easyGroup brand throughout the European Union following the withdrawal of the United Kingdom from the European Union. It is also the owner of a number of EUTMs and there is significant marketing expenditure by easyGroup with respect to the Irish market through Google Ireland and Facebook. There are a number of Irish brands within the easy family of brands including but not limited to easyHotel that are located within Ireland and are a crucial part of the easy family of brands. This, in turn, makes easyGroup IP an integral part of the overall easy group of companies.

**70.** He avers that a company is not required to disclose the value of its intellectual property in abridged financial statements and that it cannot be inferred that the EUTM has a value of one euro from those statements.

**71.** He elaborates on the level of activity of easyGroup IP in his second affidavit, including its engagement of auditors, three separate law firms, a company secretarial team and a PR team in Ireland. Mr Haji-Ioannou is said to travel to Ireland regularly to meet with the company's advisers.

**72.** On balance, it seems to me that easyGroup IP's level of activity in the jurisdiction is sufficient to enable it to assert that it is an establishment of easyGroup, and that both plaintiffs, accordingly, satisfy the requirements of Article 125(2) of being domiciled in or having an establishment within the jurisdiction.

**73.** It is not therefore necessary for me to consider the plaintiffs' fall back argument that it is only necessary for *one* of the plaintiffs to satisfy the requirements of Article 125(2), and that it is consistent with the scheme of the EUTMR that all issues are determined in one set of proceedings rather than have a multiplicity of actions in different jurisdictions. Although, that does appear to be a correct reading of the provisions of the EUTMR, it is a question which could be of significance in other proceedings and should be left over, therefore, to a case in which it might be determinative.

**74.** The plaintiffs also point to Article 128 of the EUTMR which provides as follows:

> *3. If the counterclaim is brought in a legal action to which the proprietor of the trade mark is not already a party, he shall be informed thereof and may be joined as a party to the action in accordance with the conditions set out in national law.*

**75.** As the plaintiffs note, the defendants have already indicated an intention to counterclaim in the event that this case proceeds, on the basis that the plaintiffs acted in bad faith in registering the EUTM. In those circumstances, they say, if jurisdiction were declined in respect of the first plaintiff, it would, in any event be re-joined to the proceedings in due course to answer the counterclaim. There is considerable force to this practical consideration. Again, however, it is not necessary to consider whether the court could have regard to such considerations in determining jurisdiction in light of my conclusion above that the relevant criteria in Article 125(2) are satisfied by both plaintiffs.

**76.** In any event, in the particular circumstances of this case, it makes no difference whether either or both of the plaintiffs are established in Ireland. Even if, contrary to the above, neither plaintiff could be regarded as falling within Article 125(2), the plaintiffs will be able to maintain these proceedings here if they can show to the requisite standard that there has been targeting of members of the public here by the defendants.

**77.** The evidence of targeting in the EU other than in Ireland is practically non-existent. There is no basis on which the court could be satisfied that there was no sufficient evidence of targeting in Ireland, and therefore no jurisdiction under Article 125(5), but would nonetheless be satisfied of targeting in the EU, and therefore jurisdiction pursuant to Article 125(2).

**Targeting**

**78.** In her excellent and admirably clear oral submissions, the plaintiffs' counsel helpfully identified seven factors which the plaintiffs rely on to satisfy the evidential threshold.

**79.** Before considering that evidence and the parties' competing arguments in relation to it, it is important to recall that the defendants' business long pre-dates the plaintiffs' EUTM. As we will see, the plaintiffs' complaint is, in substance, that the defendants have not *adapted* their UK business and, in particular, the UK website in light of the plaintiffs' registration of the EU mark.

**80.** I propose to consider each of the factors identified to determine whether it constitutes sufficient evidence of targeting. Before doing so, it is helpful to identify the evidence relied on by the defendants to demonstrate, as Mr Moir avers, that the "*UK website, and all of EFL's commercial and operational activity, are directed solely at members of the public in the UK*." The corollary of EFL's activity being directed *solely* at the UK public is that it is *not* directed or targeted at any EU member state, including Ireland.

**81.** Mr Moir relies on the following:

- The terms and conditions on the website require members of the public (supporters) to be permanently resident in the UK;
- Charities and organisations wishing to be added to the list of good causes must be based in the UK with UK bank accounts. This is also reflected in the terms and conditions;
- Charities and organisations must identify a representative who resides permanently in the UK;

- The search function on the website enables users to locate good causes only in the UK;
- EFL deploys paid advertising directed at the UK through Google, Bing, Meta and LinkedIn. It runs no advertising directed at Ireland or the EU. Where feasible, *e.g.* with Google ads, Ireland and the EU are explicitly excluded from paid advertisements.
- Since the start of 2025, 98.13% of all traffic to the website "*beyond the homepage*" comes from the UK. 0.07% comes from Ireland.
- Its primary consumer engagement platform is the EFL app. 98.9% of downloads of the app come from the UK, just 0.05% from users in Ireland.

**82.** In addition, Mr Moir avers that three years ago, that is, before the EUTM was registered, EFL updated its controls to ensure charities and causes which do not meet its criteria are not allowed on the platform. He says that EFL uses the Bankers Automated Clearing System (BACS) for electronic payments between accounts, which is a UK-only method for making GBP transfers. It does not work for non-UK bank accounts.

**83.** Mr Anderson in his affidavits responds to each of these.

**84.** In respect of the "*requirement*" that supporters be resident in the UK, Mr Anderson explains that no positive step is required of users to show that they meet this requirement, they do not even need to input a UK address. He says that the same applies in relation to the equivalent requirement of good causes. In relation to the requirement that a charity or organisation have a UK bank account, he says that there is no reason why an Irish organisation could not have a UK bank account. He complains that the defendants have not explained why it is not technically feasible to restrict ad campaigns to the UK, though he does not suggest that there is no difficulty in so doing.

**85.** The plaintiffs contend that the defendants' figures regarding website use only refer to traffic beyond the homepage. They provide evidence from a service which provides analysis of website traffic which suggests that 0.14% of the UK website traffic from March 2025 to February 2026 came from Ireland, and 0.11% over a three year period to February 2026.

**86.** Mr Anderson says that the EFL app is available for download in multiple jurisdictions including Ireland, where it has been downloaded 959 times. In reply, Mr Moir says that the EFL app is only available in the UK on Google Play, where developers have to affirmatively select each country in which an app will be made available. When the app was launched in 2015, only the UK was selected. By contrast, the Apple app store defaults to making apps available to all countries and an app provider must actively de-select countries in which they do not want their app available. Though not expressly stated, it appears that the defendants did not take the step of deselecting jurisdictions.

**87.** Some of the matters relied on by the defendants, in particular, the stated requirement that both supporters and good causes be resident in the UK, the fact that the UK is the only jurisdiction in which the EFL has been made available on Google Play, the use of the BACS electronic payment system, provide evidence that the defendants have targeted the UK to the exclusion of all other jurisdictions. As part of a multi-factorial assessment, this is evidence which must be weighed in the balance when considering the purported evidence of targeting in Ireland and/or the EU.

**88.** It is also helpful to consider whether any of the suggested indicators that there has been targeting identified in the case law above are present in this case. It is apparent that few, if any, are. The following matters are identified in the case law of the CJEU:

- The offer for sale is accompanied by details of the geographic areas to which the seller is willing to dispatch the product (*L'Oreal*)
- The offer and an advertisement refer expressly to the public of a Member State (Advocate General in *AMS Neve*)
- The offer is available on a website with a country-specific top-level domain of that Member State (Advocate General in *AMS Neve*, *Lannen*)
- Prices are given in the national currency or that telephone numbers on such a website contain the national prefix of the State concerned (Advocate General in *AMS Neve*)
- The offer for sale provides details concerning where the seller was prepared to dispatch goods (Advocate General in *AMS Neve*)
- The international nature of the activity (*Lannen*)

- The use of a language or a currency other than the language or currency generally used in the member state in which the trader is established (*Lannen*)
- Mention of telephone numbers with an international code ((*Lannen*)
- Outlay of expenditure on an internet referencing service in order to facilitate access to the trader's site or that of its intermediary by consumers domiciled in other member states (*Lannen*)
- Mention of an international clientele composed of customers domiciled in various member states (*Lannen*)

**89.** Though it is true that these indicators are directed to the provision of goods rather than services, it is striking that none of them is a feature of the UK website.

**90.** I turn then to the particular factors highlighted by the plaintiffs in their submissions to the court.

*Irish retailers listed on site*

**91.** The first factor identified by the plaintiffs is the number of retailers with Irish affiliations said to be listed on the defendants' website.

**92.** The statement of claim includes the following plea:

*The First Named Defendant has targeted members of the public in the State and in the European Union by permitting members of the public to buy products and services provided by businesses including Aer Lingus, Irish Ferries, Travelodge Ireland, Imagine Ireland, the Gleneagle Hotel, Actavo, Ayu Cosmetics, Carl Scarpa, Destination Killarney, Dublin Airport Parking, Dubarry, FitPink Athleisure, Fresh Cuts, Hanley's of Cork, Louis Copeland, Life Style Sports, Magee 1866, Newbridge Silverware, Revive Active, Research and Markets, Sculpted by Aimee, Scotts Hotel Killarney, Spotlight Oral Care and Theo and George.*

**93.** The defendants acknowledge that these retailers were on the website – some have since been removed – but contend that all but one, Hanley's of Cork, advertise and sell products or services in the UK. It has been removed from the website.

**94.** The plaintiffs' counsel makes a superficially attractive argument in relation to the presence of Irish businesses on the defendants' site. She imagines an Irish consumer landing on the UK website and then searching for the name of an Irish retailer that they regularly use and discovering that that retailer is on the site. The site enables the consumer to purchase goods from that retailer in a way which requires that retailer to make a contribution to a good cause. From the perspective of the Irish consumer, what does it matter that that retailer sells goods to the UK?

**95.** The plaintiffs argue that the correct perspective is that of an Irish consumer landing on the UK website and that I should assume that such consumers do make their way to the website. Even if it is the case that some members of the Irish public do make their way to the UK website (and there is clearly evidence to support the contention that Irish consumers have used the website), it is relevant to consider whether the defendants have taken any step to direct them there, or to encourage them to use the website. No direct evidence of any such step by the defendants was proffered by the plaintiffs.

**96.** I agree that it may not be relevant from an Irish consumer's perspective that an Irish retailer on the UK website markets to the UK. But from the perspective of a service provider providing a service to the UK it is. There can be no objection to the defendants permitting any retailer who markets to the UK from availing of the service it provides. Put otherwise, it is consistent with the defendants wishing to target only the UK that all the retailers on the site provide goods or services in the UK. There is no suggestion in the case law that a person has to actively limit the scope of its operations to exclude those who trade in a jurisdiction protected by an EUTM in order to avoid the risk of infringement. Indeed, this would be entirely contrary to the established position that mere availability or accessibility of online offers or advertising does not constitute targeting.

**97.** The case law makes clear that there must be evidence of "*active conduct*" which suggests targeting. The question, therefore, is whether the defendants have done anything, taken any active step, to target Irish consumers by permitting Irish retailers who market to the UK to use the website. There is nothing in the mere presence of such retailers on the UK website which provides any evidence that the defendants have targeted Irish users. The position is no different that the existence of 16 Irish clients of Easy Forex. There is no evidence, for instance, of the defendants advertising to the Irish market, or of their encouraging Irish retailers on the site to do so.

**98.** The plaintiffs make a point by reference to the judgment in the English proceedings referred to above in which the UK website as of 2005 was described. At that time, the home page on the website referred to being able to "*choose from over 150 of the UK's best known retailers*". They point out that the number of retailers is now over 8000, but the website no longer identifies that they are the UK's best known retailers. The plaintiffs did not put copies of the relevant webpages in evidence, but, as will be discussed below, the parties agreed that I could look at the website. Although there is no reference to the retailers being the best known in the UK, it is obvious that the retailers are overwhelmingly UK-based. The plaintiffs identify a very small number, 24, retailers with Irish affiliations, many of whom are no longer on the website following complaints from the plaintiffs. That seems to comprise less than 0.3% of the total number of retailers on the website. All the retailers highlighted on the home page are also clearly UK-based. In those circumstances, the clear impression, when visiting the webpage, with a high-level UK domain name, is that it is directed to UK users. There is nothing which creates an initial impression that it is directed at non-UK users, whether in Ireland, the EU or elsewhere. It is not "*apparent, straight away*" from the contents of the website that it is directed at members of the public in Ireland.

**99.** The defendants are not required to restrict their service to retailers who provide goods or services only in the UK in order to show that they have not targeted any other jurisdiction. The fact that they have not done so in this case does not constitute the sort of active conduct which the authorities make clear is an essential element necessary to evidence targeting.

*Good causes linked with Ireland*

**100.** The plaintiffs also complain that there are many charities or organisations with Irish affiliations which are supported by the UK website. They refer to over 100 organisations with the word 'Ireland' in their name, and almost 150 with the word 'Irish'. An additional

25 have the word ‘Gaelic’, seven ‘Camogie, and 16 ‘GAA’. The plaintiffs list 42 such causes in their statement of claim.

**101.** One might infer from this evidence that by making it possible to donate to so many Irish charities on the website, the defendants are engaged in active conduct to target members of the public in Ireland. However, even the most cursory analysis of that evidence makes clear that the plaintiffs’ complaint does not stand up to scrutiny. The plaintiffs suggested that it was difficult for them to "*conduct a forensically rigorous exercise to satisfy the threshold*" prior to discovery, and the relevant perspective, in any event, was of the consumer and the impression that the UK website would make on them. It may be that a forensic analysis was beyond the scope of the plaintiffs at this early stage of proceedings, but the exercise conducted was wholly lacking in rigour. More importantly, it did not reflect what would be immediately apparent to any user of the UK website.

**102.** As is clear from the evidence of Mr Moir (and even a brief review of the website), almost all of the charities or organisations to whom donations can be directed are UK-based, including those with Ireland, Irish, GAA or similar in their title. These are all UK-based organisations, from Scotland, Northern Ireland and England. When visiting the website, the address of each good cause is given, and in each case, it is apparent that the address is a UK address.

**103.** Three organisations, who registered with the site with UK addresses and UK bank accounts, were subsequently found to be based in Ireland. All three have been removed.

**104.** It must be recalled that no EU trade mark court has any jurisdiction to address use of the plaintiffs’ EUTM in the UK. The use of the mark in the UK is, therefore, entirely irrelevant for the purpose of these proceedings. The fact that almost all the organisations on the UK website are UK organisations strongly suggests that the website is *not* targeted outside the UK.

**105.** The plaintiffs seem to suggest that some of the charities or organisations have activities in Ireland as well as within the UK and, accordingly, this involves targeting to Ireland. In particular, a number of Belfast-based charities were said to have all-Ireland scope. As with retailers who market to the UK and Ireland, this does not give rise to any inference of targeting to Irish consumers.

**106.** The plaintiffs say that it is irrelevant that the defendants have taken steps to ensure that the charities and organisations are UK-based, by requiring UK addresses and bank accounts (and removing organisations found not to be UK-based), because none of that is apparent to the consumer. However, what the court is concerned with for the purpose of this application is whether there has been any active conduct on the part of the defendants to target Irish consumers. The only evidence is of active conduct to ensure that EFL's activities are directed towards the UK.

**107.** I should say that I agree with the plaintiffs that the fact that retailers and organisations found not to be UK-based have been removed from the UK website is not irrelevant to the consideration of whether there has been targeting. It remains the case that for a period of time, there were Irish-based organisations on the website. However, the fact that such limited instances occurred is not sufficient by itself to constitute evidence of a reasonable presumption of targeting any more than the fact that Easy Forex had 16 Irish clients was evidence of targeting in that case.

*Template social media adverts*

**108.** The third matter relied on by the plaintiffs is the provision of social media templates by the defendants to users of the site to help improve fundraising. These are in the form of pre-written social media templates, emails and WhatsApp messages said to enable users "*to spread the word about how they can support your cause at no extra cost to them*".

**109.** The plaintiffs exhibit two social media posts, one on an account affiliated with the Association of Baptist Churches in Ireland, a Belfast-based organisation but with churches all over Ireland, which post provides a link to the UK website. They exhibit a post from the Lucy Irvine Foundation Europe which provides a link to the UK website. This post refers to saving dogs in Bulgaria. This is the *only* evidence even suggested by the plaintiffs to constitute evidence of targeting in the EU other than in Ireland. It is convenient to state my conclusion on this issue here. This could not possibly be considered evidence of targeting in Bulgaria *by the defendants*, since it is a post by the charitable organisation. The UK website shows that the organisation has an address at Fishguard, in Wales. It is a UK charity, not a Bulgarian charity. In addition, the fact that the post is in English makes clear that it is not directed at the Bulgarian consumer.

**110.** The plaintiffs' complaint about the templates provided by the defendants appears to be that they do not expressly include an indication that the defendants' service is a UK-based service. Firstly, this is incorrect. The posts direct consumers to what is obviously a UK-based website, with a .org.uk domain name. Thus, the first impression, which the plaintiffs stress is crucial, is that the posts are directed to UK consumers. The templates do not, in my view, add anything to the plaintiffs' complaint that the defendants do not prevent UK-based charities and organisations which also have operations in Ireland from registering on the site or actively prevent Irish consumers from using the site. I have already concluded that this does not represent evidence of active conduct sufficient to raise a reasonable presumption of targeting. The social media templates do not affect that conclusion.

*Number of visitors to UK website from Ireland*

**111.** Perhaps the most straightforward evidence relied on by the plaintiffs relates to the number of people said to have visited the UK website from Ireland. The plaintiffs say that the relevant figure is the 0.14% of total visitors to the homepage of the UK website who are based in Ireland; the defendants that it is the 0.07% who go beyond the homepage. The plaintiffs say that 0.14% represents 32,928 "*users based in Ireland*" over that twelve month period.

**112.** The plaintiffs argue that it is the immediate impression created by the website which is important and that, accordingly, it is visits to the homepage which represent the relevant metric. They contend that that is the total number of Irish users, not the proportion of Irish users which is the relevant figure. The defendants contend that the relevant figure is those who, having visited the website, go further and could arguably be said to be the subject of targeting. It seems to me that the plaintiffs are correct that the total number of visitors to the site *simpliciter* could have significance. I disagree with the plaintiffs, however, that it is irrelevant what proportion of total users the number visiting from outside the UK represents.

**113.** The plaintiffs do not identify anything on the defendants' homepage which is said to be directed or targeted at the Irish public, though they do suggest that non-UK members of the public are not dissuaded from using the site: there is nothing, or nothing sufficient, which makes clear that the site is for UK users only. The relevance of the number of visitors to the site, therefore, appears to lie in the suggested inference to be drawn from those traffic numbers, *i.e.* if that many people are visiting the site from Ireland, then there must be targeting of the Irish public, or at least an onus on the defendants to direct them away from the site.

**114.** Though the plaintiffs are correct that the relevant figure for evidential purposes is likely the number of Irish users who access the defendants' site, I do not agree that the proper inference to draw from those numbers is that there is targeting of the Irish public.

**115.** The plaintiffs rely on the figure of almost 33,000 visits by Irish based users to the UK website in a twelve month period. Assuming for present purposes a binary position, that the defendants either do or do not target members of the Irish public, the plaintiffs do not give any basis for contending that that number of visits supports either proposition. I do not see how a court could form any view, on the basis of being told that number of persons had visited the website, that this suggested that the defendants had or had not taken active steps to target members of the Irish public.

**116.** What can be discerned, however, is that this figure represents a tiny proportion of the total visits to the UK website. The very small proportion of total visits that this represents suggests an *absence* of targeting. In the absence of direct evidence of targeting, this proportion of visits from Irish based users does not give rise to an inference that there is nonetheless targeting by the defendants.

*EFL app is available in Ireland*

**117.** Similar considerations arise in relation to the availability of the EFL app in Ireland. The evidence is that it is available on the Apple app store and 959 people have downloaded the app in Ireland.

**118.** However, those 959 represent just 0.05% of total downloads. By contrast, 98.9% of downloads are from the UK. 0.26% are from the United States, to where it could not plausibly be suggested that the UK website is directed. The volume of downloads from Ireland is correctly characterised by the defendants as "negligible".

**119.** In addition, it is necessary to consider the defendants' uncontested evidence that the availability of the app on the Apple app store represents default availability for an app. The defendants accepted that default position long before the plaintiffs registered the EUTM. The plaintiffs' case, in effect, is that the failure by the defendants to *change* the default settings following the plaintiffs' registration of the EUTM in 2025 represents active conduct on its part to target the Irish public. Given the very small number of non-UK downloads of the app, I cannot agree.

**120.** In considering this particular evidence, it is helpful to consider two key factors. The first is that the authorities make clear that mere availability of a website does not constitute targeting. The consequences of that are significant. It means that there is no obligation to take steps to restrict the *availability* of a website or online advertising in jurisdictions where an EU trade mark is in force; the obligation is not to take active steps to target such a jurisdiction.

**121.** The second relevant factor is that EFL was long established by the time that the EUTM was registered by easyGroup. The UK website had been in operation since 2005. Where no EUTM was in being, even were there an obligation to restrict the availability of its offering outside the UK, there was no reason so to do.

**122.** The plaintiffs' case, therefore, is that the defendants were required to introduce such restrictions following the registration of the EUTM. But even if that proposition is arguable, no such obligation could arise unless the UK website had previously been used to target members of the public outside the UK. The fact that the defendants have *not* targeted anywhere other than the UK is clearly evidenced by the fact that, where it was required to positively select countries in which the app would be available, on Google Play, it selected only the UK. The uncontested evidence is that the EFL app is the main driver of the defendants' business. Accordingly, even before the EUTM was registered, the defendants had clearly evinced an intention to target only UK consumers. The decision to select only the UK for availability of its app on Google Play is wholly inconsistent with a desire to target anyone other than UK users.

*Irish-issued credit cards are registered and tracked*

**123.** The sixth point relied on by the plaintiffs relates to one of the terms and conditions of use for supporters, clause 8.6(b):

> *Only payment cards issued in the UK are certain to be registered to track purchases. If your card was issued in any country other than the UK, US or Ireland, we cannot guarantee that your card will be registered, or that your transactions will be tracked (meaning that your use of your card in relation to an in-store Retailer offer may not generate a Donation).*

**124.** The plaintiffs ask why would there be such a carve out, for Irish-issued credit cards, unless it was to generate custom from Ireland.

**125.** This is not an issue which was directly raised in the plaintiffs' pleadings or affidavits and is not, accordingly, addressed by the defendants in their affidavits. The defendants' counsel speculated that the reason for the carve out related to credit card companies' terms of use. More significantly, he argued that it was not plausible to suggest targeting by reference to a term and condition contained at clause 8.6(b) of 44 terms and conditions. I think that this must be correct. It is certainly not "*apparent, straight away*" from this aspect of the UK website that non-UK residents are being targeted. Moreover, any member of the public investigating the terms and conditions would first have seen clause 3.2, the requirement that any supporter registering on the site promises, by so registering, that they are permanently resident in the UK.

**126.** Insofar as the terms and conditions are relevant to the question of whether there is targeting of members of the public outside the UK, the plaintiffs cannot pick and choose which terms and conditions might be relevant. Any member of the public who actually read the terms and conditions could be in no doubt but that the UK website is directed to and targeted at the UK only.

**127.** Before turning to the last factor relied on by the plaintiffs, I have considered whether the foregoing factors, none of which by themselves give rise to a reasonable presumption that there may have been an infringement, that EFL had targeted members of the public in

Ireland, could, taken together, be said to meet the evidential threshold. I think not. None of the factors identified by themselves or together is inconsistent with the defendants' contention that their service is solely directed at the UK. The plaintiffs have identified no active conduct of the defendants to target consumers in the State. The matters relied on by the plaintiffs do not give rise to sufficient doubt that the possibility the plaintiffs could make out an infringement claim here could be said to arise. Put otherwise, the factors identified by the plaintiffs do not disclose a case of targeting by the defendants of members of the public in Ireland through their online activity which is reasonably capable of being proven.

*Non-UK members of the public are permitted to register*

**128.** The final issue relied on by the plaintiffs is that non-UK members of the public are permitted to register on the UK website. Although the terms and conditions, as stated, provide that registration comprises a promise that a person is a permanent UK resident, supporters are not required to provide a UK address when registering, or expressly confirm residence in the UK. Non-UK users are not 'geo-blocked' from accessing the site. The plaintiffs appear to accept that these measures are not 'standard', such that their absence could be said to indicate targeting of members of the public outside the UK. Rather, the plaintiffs complain that the defendants' failure to introduce them in response to its complaints illustrates that EFL is targeting non-UK members of the public.

**129.** The defendants do not dispute that they have not put in place measures which make it impossible for non-UK residents to use their service, but assert that this is not a requirement. More particularly, Mr Moir says that EFL should not be required to actively "block" non-UK residents by putting in place an "*onerous and intrusive*" residency verification process simply in order to prove that they are not targeting EU or Irish members of the public. Since the information is not necessary for the purpose of its UK-directed business, the collection of that data would be disproportionate and contrary to the principle of data minimisation. He explains that as a technical measure it is not straightforward or risk free and could lead to a degradation of EFL's service. Finally, he says that employing geo-blocking is not the industry norm, even in websites clearly directed at domestic markets, and that making a platform accessible does not equate to targeting.

**130.** In reply, Mr Anderson suggests that the defendants did previously collect users' addresses, and refers to correspondence in which this is alleged to have occurred in 2024, pre-dating the registration of the EUTM. The basis for the allegation is somewhat unclear, and is flatly denied by Mr Moir, who avers that the practice of collecting addresses was discontinued in 2017.

**131.** Mr Anderson disputes the complexity of introducing geo-blocking. He does accept that it is not common practice but states that the defendants have failed to acknowledge that the plaintiffs have identified these measures as reasonable and proportionate to address "*the manner in which members of the Irish public are being targeted*" by EFL.

**132.** The difficulty for the plaintiffs in relying on these matters is that they tend to assume the underlying merit of their complaint. If there is no targeting by the defendants of members of the public in Ireland, then why should they be required to amend their practices to address it? The absence of address verification and geo-blocking is just as consistent with UK-only targeting as with targeting in the EU and Ireland. It cannot, therefore, by itself, provide the evidential support the plaintiffs require to establish that this court has jurisdiction to hear these proceedings.

**133.** As I have concluded above, the plaintiffs have not otherwise pointed to evidence giving rise to a reasonable presumption that the defendants are targeting members of the public in Ireland. In the circumstances, it is not "*reasonable and proportionate*" to require the defendants to introduce an obviously inconvenient residency verification requirement (for both EFL and its clients) in order to, in effect, prove a negative. A plaintiff cannot make a groundless complaint and then argue that the failure to adapt in response to it illustrates the merits of the complaint.

**134.** Had matters been finely balanced, it might be that the failure to have in place these measures or to adopt very straightforward measures might have been sufficient to give rise to a presumption of targeting. But the plaintiffs need to point to active conduct on the part of EFL to target members of the public in Ireland or the EU. The threshold is not met by the availability and accessibility of the defendants' UK website outside the UK. Based on the evidence proffered by the plaintiffs, who bear the onus of proof, any presumption that the defendants have been targeting Irish or EU users would not be reasonable.

*Other factors*

**135.** Despite the plaintiffs' reliance on the UK website as the 'source' of the defendants' targeting of non-UK members of the public, the website was not itself in evidence, though aspects of it were described. Both parties confirmed, however, that there was no objection to my visiting the website. I did so in order to see whether my conclusions on the evidence were reinforced or undermined. Without wishing to place any great weight on my own experience with the UK website, the conclusions reached above were reinforced. There is nothing suggesting targeting of non-UK members of the public on the website. The overall impression from visiting the website and viewing various pages on it is that the defendants are providing a service directed at UK retailers, charities, and members of the public in the UK.

**136.** The plaintiffs also placed some emphasis on their assertion that, unlike in *Easy Forex* where the claim could have been pursued in Cyprus, if this court declines jurisdiction, then the plaintiffs have no forum for their claim. If that is so, it is because they have not met the relatively low evidential threshold necessary to establish jurisdiction. In other words, it is because of the application of the threshold established by the relevant jurisprudence. To permit the plaintiffs' claim to proceed in this jurisdiction simply because there was no other jurisdiction in which it could be pursued would involve disapplying that threshold and would be wholly illogical.

**Conclusion**

**137.** The plaintiffs are required to meet a relatively low threshold in order to establish that Ireland has jurisdiction to hear and determine their claim of infringement of their EUTM. However, the various factors identified by them, whether by themselves or considered together do not give rise to a reasonable presumption that the defendants have infringed the EUTM by targeting members of the public in Ireland through their online activity. In particular, the plaintiffs have identified no active conduct on the part of the defendants targeting non-UK members of the public. The plaintiffs have not met the evidential threshold required.

**138.** In the circumstances, I will set aside the order granting leave to serve notice of the proceedings and decline jurisdiction.

**139.** I will list the proceedings on 30 July 2026 at 10.30 am for the purpose of making final orders.