

O/0122/26

TRADE MARKS ACT 1994

IN THE MATTER OF REGISTRATION NO. UK801502134

IN THE NAME OF PLANTED VENTURES, LLC

FOR THE TRADE MARK:

PEOPLE WHO GIVE A CROP

IN CLASSES 25, 29 AND 30

AND

AN APPLICATION FOR A DECLARATION OF INVALIDITY

UNDER NO. 507990

BY CROP'S N.V.

BACKGROUND AND PLEADINGS

1. Planted Ventures, LLC (“the proprietor”)¹ is the owner of the comparable trade mark shown on the cover page of this decision (“the contested mark”).² The contested mark was applied for on 13 September 2019, but has a priority date of 4 June 2019.³ It was registered on 22 June 2020 for goods in classes 25, 29 and 30.⁴

2. On 30 October 2024, CROP'S N.V. (“the applicant”) applied to have the contested mark declared partially invalid, based upon sections 47(2)(a) and 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The application is directed at goods in classes 29 and 30 for which the contested mark is registered.⁵

3. The applicant relies upon its earlier comparable UK trade mark number 801379900, ‘CROP’S’ (“the earlier mark”). The earlier mark filed on 5 September 2017, became registered on 22 May 2018. The applicant relies on all its goods in classes 29 and 30.⁶

4. The applicant claims that the parties’ marks are visually, aurally and conceptually (highly) similar, and that the goods are identical or highly similar, resulting in a likelihood of confusion.

5. The proprietor filed a counterstatement denying the claims made and requesting proof of use of the earlier mark.

6. The proprietor, originally represented by Kilburn & Strode LLP, is now represented by Appleyard Lees IP LLP.⁷ The applicant is represented by KOB NV.

¹ On 6 February 2025, following the filing of a Form TM16 the contested mark was assigned from Ittella International, Inc. to Planted Ventures, LLC (“the proprietor”), who in turn, confirmed its agreement to undertakings in its written submissions of 27 February 2025.

² Under Article 54 of the Withdrawal Agreement between the UK and the EU, the UK IPO created comparable UK trade marks for all right holders with an existing registered EUTM or International Registration designating the EU. As a result, the proprietor’s and applicant’s marks were converted into comparable UK trade marks. Comparable UK marks are now recorded in the UK trade mark register, have the same legal status as if they had been applied for and registered under UK law, and the original filing dates remain the same. See also Tribunal Practice Notice (“TPN”) 2/2020 End of Transition Period – impact on tribunal proceedings.

³ US 88459153.

⁴ See the Annex to this decision.

⁵ See the goods comparison at paragraph 20.

⁶ See the goods comparison at paragraph 20.

⁷ The proprietor’s representatives were changed following the filing of a form TM33, on 6 January 2025.

7. Neither party requested a hearing, and whilst both parties filed evidence and submissions, only the proprietor filed written submissions in lieu of a hearing.

EVIDENCE AND SUBMISSIONS

8. The applicant filed evidence in the form of the joint witness statement of Pieter Coppens and Wouter Tally dated 6 March 2025, which is accompanied by eleven exhibits. Mr Coppens is the applicant's Chief Financial Officer, a position held since 1 July 2022; Mr Tally is the applicant's Legal Manager, a position held since 2 August 2021. The applicant's evidence was accompanied by written submissions filed on 6 March 2025. The main purpose of the evidence is to demonstrate that the earlier mark has been put to genuine use during the relevant period in relation to the goods relied upon.

9. The proprietor filed evidence in the form of the witness statement of Graham Pierssene Johnson, dated 27 May 2025, which is accompanied by one exhibit. Mr Johnson is a Partner and Trade Mark Attorney at the proprietor's representatives. The proprietor's evidence was accompanied by written submissions filed on 27 May 2025. The evidence comprises a screenshot taken from the applicant's website regarding the origin of the brand name 'Crop's'.

10. The applicant filed written submissions in reply on 14 July 2025.

11. The proprietor filed written submissions in lieu of a hearing on 12 August 2025.

12. This decision is taken following careful consideration of the papers on file.

RELEVANCE OF EU LAW

13. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated

law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.⁸

DECISION

14. Section 5(2)(b) of the Act has application in invalidation proceedings pursuant to section 47 of the Act, the relevant parts of which read as follows::

“47. (1) [...]

(2) Subject to subsections (2A) and (2G), the registration of a trade mark may be declared invalid on the ground-

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

(b) [...]

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

[...]

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

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

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

⁸ See also Tribunal Practice Notice (“TPN”) 2/2020 End of Transition Period – impact on tribunal proceedings.

(c) the use conditions are met.

(3) [...]

(4) [...]

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

(5A) An application for a declaration of invalidity may be filed on the basis of one or more earlier trade marks or other earlier rights provided they all belong to the same proprietor.

(6) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made: Provided that this shall not affect transactions past and closed.”

15. As the applicant’s mark is a comparable mark, paragraph 9 of part 1, Schedule 2A of the Act is relevant. It reads:

“9. (1) Section 47 applies where an earlier trade mark is a comparable trade mark (EU), subject to the modifications set out below.

(2) Where the period of five years referred to in sections 47(2A)(a) and 47(2B) (the "five-year period") has expired before IP completion day–

(a) the references in section 47(2B) and (2E) to the earlier trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in section 47 to the United Kingdom include the European Union.

(3) Where IP completion day falls within the five-year period, in respect of that part of the five-year period which falls before IP completion day–

(a) the references in section 47(2B) and (2E) to the earlier trade mark are to be treated as references to the corresponding EUTM; and (b) the references in section 47 to the United Kingdom include the European Union.”

My Approach

16. By virtue of its earlier filing date, the trade mark upon which the applicant relies qualifies as an earlier trade mark pursuant to section 6 of the Act. As the earlier mark had completed its registration process more than 5 years before the application for a declaration of invalidity, it is subject to proof of use pursuant to section 6A of the Act. However, for reasons that will become apparent later in this decision, I do not consider that the issue of proof of use will be determinative in these proceedings, and I will conduct my assessment on the basis that the applicant can rely upon the full breadth of its specification.

Section 5(2)(b)

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

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

[...]

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

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

18. The principles considered in this application for invalidity are gleaned from the decisions of the Court of Justice of the European Union (“CJEU”) in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P.

The principles:

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

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

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

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

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

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

(g) a lesser degree of similarity between the goods or services may be offset by a greater degree of similarity between the marks, and vice versa;

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;

(k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of goods

19. The competing goods are as follows:

Applicant's goods	Proprietor's goods
<u>Class 29</u> Frozen vegetables; prepared vegetables; processed vegetables; preserved vegetables; vegetable burgers (processed vegetable patties); cheese products for use in cheese	<u>Class 29</u> Frozen, prepared and packaged meals consisting primarily of meat, fish, poultry or vegetables; pre-packaged ready-to-eat prepared food, namely acai berry

<p>burgers; snacks based on vegetables; ready-to-eat vegetables; prepared fruit; frozen fruit; ready-to-eat deep-frozen meals consisting mainly of vegetables; prepared meals consisting mainly of meat; prepared meals consisting mainly of fish; soups; fruit and vegetable puree.</p>	<p>bowls containing processed acai berries.</p>
<p><u>Class 30</u> Herbal mixtures; herb sauces; processed herbs; frozen herbs; cooked rice; frozen ready-to-eat rice; frozen pasta; rice-based snacks; chilled desserts; prepared pasta-based meals; sandwiches; fruit sauces.</p>	<p><u>Class 30</u> Frozen, prepared and packaged meals consisting primarily of pasta, grain or rice; frozen pizzas; frozen pasta; noodle-based prepared meals.</p>

Class 29

20. Although expressed slightly differently, *ready-to-eat deep-frozen meals consisting mainly of vegetables* contained in the applicant's specification and the contested *frozen, prepared and packaged meals consisting primarily of [...] vegetables* are identical.

Class 30

21. The term *frozen pasta* appears identically in the specifications of both marks.

My Approach

22. As I have found identical terms in both classes, I will conduct my assessment on the basis that at least some of the goods are identical. If the applicant is unable to succeed on this basis, it will be in no better position if its goods are only to be regarded as similar to those of the proprietor. However, if it becomes necessary to do so, I shall return to this position and carry out a full comparison.

The average consumer and the nature of the purchasing act

23. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question (see Lloyd *Schuhfabrik Meyer*, Case C-342/97).

24. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

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

25. The average consumer for the parties' goods at issue will be a member of the general public. The goods are everyday foodstuffs which are likely to be purchased frequently, at low cost. The main focus will likely be use and flavour, although some attention may also be paid to allergy information, calories, fat and salt content, etc. Accordingly, I find that the average consumer will pay a medium degree of attention during the purchasing process. The goods are likely to be selected from the shelves of a retail outlet or their online equivalents. Consequently, visual considerations are likely to dominate the selection process. However, I do not discount an aural component to the purchase given that advice may be sought from retail assistants.

Comparison of the marks

26. It is clear from *Sabel BV v. Puma AG* that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details.

The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by them, bearing in mind their distinctive and dominant components. The Court of Justice of the European Union (“CJEU”) stated in *Bimbo SA v OHIM*, that:

“34. [...] it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

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

28. The trade marks to be compared are as follows:

Applicant’s trade mark	Proprietor’s trade mark
CROP'S	PEOPLE WHO GIVE A CROP

Overall Impression

29. Both marks are presented in standard upper-case letters without any stylisation. The applicant’s mark comprises the word CROP'S. The overall impression resides in this single element. The proprietor’s mark comprises the words PEOPLE WHO GIVE A CROP. I am of the view that the average consumer is likely to perceive the mark as a phrase. Accordingly, I find that none of the words contained in the mark dominate and therefore the overall impression of the mark resides in the combination of the words.

30. Visually, the marks overlap in the first four letters of the applicant's mark and the last four letters of the proprietor's mark, namely CROP. They differ in the apostrophe and the last letter 'S' in the applicant's mark, and the first, second, third, and fourth words in the proprietor's mark, namely PEOPLE WHO GIVE A. Accordingly, weighing up the similarities with the differences, I find the marks to be visually similar to a low degree.

31. Aurally, the applicant's mark consists of one syllable, namely CROPS, whereas the proprietor's mark consists of six syllables, namely PEO-PLE-WHO-GIVE-A-CROP. Therefore, the only aural overlap occurs between the first syllable in the applicant's mark and the sixth syllable in the proprietor's mark, namely CROPS/CROP, where the only difference between these elements is the letter 'S' sound at the end of the applicant's CROP. Accordingly, I consider the marks to be aurally similar to a low degree.

32. Conceptually, I am of the view that a significant proportion of consumers will overlook or ignore the apostrophe in the mark CROP'S perceiving it simply as the plural of the ordinary dictionary word 'CROP', meaning, inter alia, plants grown in large quantities for food, etc. However, with regard to the applicant's mark, I note the following statement contained in the proprietor's evidence,⁹ (retrieved from the applicant's website, 'crops-uk.com'): "*The apostrophe in our name is not a 'grocer's apostrophe'. Instead it is an example of nominative determinism. Crop's NV was named in honour of Lucien Decrop*". Accordingly, I acknowledge that a non-significant proportion of relevant consumers may not overlook the apostrophe but instead perceive CROP'S as a surname 'CROP' in its possessive form (CROP'S).

33. The words 'PEOPLE WHO GIVE A CROP' in the proprietor's mark are dictionary words which will be attributed their ordinary individual meanings. I am of the view that the words will be perceived as a phrase with an unclear meaning. I acknowledge that for some, the phrase may be understood as a play on the idiom 'people who give a crap' referring to, for example, people who care a lot about something. If perceived in this way, the mark may be understood as meaning 'people who care about crops'.

⁹ Exhibit GPJ1.

34. Overall, I am of the view that a significant proportion of consumers will likely overlook the apostrophe in the applicant's mark and perceive it as the plural of the ordinary dictionary word 'CROP', which is also present in the proprietor's mark. Accordingly, I find the marks to be conceptually similar to a low degree.

Distinctive character of the earlier mark

35. In *Lloyd Schuhfabrik Meyer*, the CJEU stated that:

"22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Alternberger* [1999] ECR I-0000, paragraph 49).

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

36. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The degree of distinctiveness is an important factor

as it directly relates to whether there is a likelihood of confusion; the more distinctive the earlier mark, the greater the likelihood of confusion. The distinctive character of a mark can be enhanced by virtue of the use that has been made of it.

37. The applicant's mark consists of the word CROP'S. As previously stated, I am of the view that a significant proportion of consumers will simply overlook or ignore the apostrophe in the mark leading them to perceive the mark as 'CROPS', being the plural of the ordinary dictionary word 'CROP', meaning, inter alia, plants grown in large quantities for food, etc. Therefore, whilst not directly descriptive, I find that in the context of some of the goods at issue, the mark alludes to characteristics of the goods, e.g. fruit and vegetables that have been grown in crops. Accordingly, I find the applicant's earlier mark to be inherently distinctive to between a low to medium degree.

38. I now turn to consider whether the distinctiveness of the applicant's mark has been enhanced through use. I note the following from the applicant's evidence:

a) The applicant has been using the CROP'S brand during the five-year relevant period in relation to various food products, such as frozen fruit, vegetables and prepared meals.

b) The mark has been used on the applicant's website and on its social media platforms since at least 2019.¹⁰

c) Products are sold in packaging displaying the CROP'S brand.¹¹

d) A selection of invoices have been provided, dated between 8 February 2019 and 18 June 2024. These invoices all feature acceptable versions of the applicant's mark, all originate from a subsidiary of the applicant, namely Crop's Foods Ltd, and are all addressed to various locations in the UK. Further, the invoices all relate to CROP'S goods such as fruit, vegetables and prepared meals, including cauliflower cheese, macaroni cheese, chicken tikka biryani, chicken and bacon pasta, roasted vegetables,

¹⁰ Exhibits PCWT8, PCWT9, PCWT10 and PCWT11.

¹¹ Exhibit PCWT4.

savoury rice, blueberries, strawberries, white rice and mixed spicy stir fry. The invoice totals range between £36,156.96 and £168,743.71.¹²

e) The applicant's LinkedIn page features its mark, however, it only has 2 followers. Promotional activities have been carried out through social media, dated between 2019 and 2024, however, the number of subscribers and likes attributed to the various posts is unknown.¹³

f) The CROP'S brand has been used in promotion and sponsorship in various events, although the evidence only contains one such example which relates to a golf sporting event, held in 2023. However, it is not clear where this event was held or how many people were in attendance.¹⁴

g) The applicant's CROP'S products have been advertised in a 'Crop's publication'. The magazine states that Crop's is a family-run business with more than 40 years of experience in growing and producing frozen vegetables, fruits and culinary meals. The magazine features several recipes that can be made with the CROP'S trademark products. However, the publication is undated, and no information has been provided regarding the reach of this publication.¹⁵

h) The applicant has promoted its CROP'S brand through trade fairs in the UK and has incurred expenditure associated with its participation and promotional materials used at the fairs.¹⁶

i) In 2023, a subsidiary of the applicant, namely CROP'S Foods Ltd, received a British Frozen Food award for 'product of the year'.¹⁷

39. Whilst I am satisfied that the applicant has clearly been trading under the CROP'S brand and that its sales figures shown in the above stated invoices are not insignificant, I have no information before me regarding market share or advertising expenditure.

¹² Exhibit PCWT7.

¹³ Exhibits PCWT9, PCWT10 and PCWT11.

¹⁴ Exhibit PCWT3.

¹⁵ Exhibit PCWT4.

¹⁶ Exhibits PCWT5 and PCWT6.

¹⁷ Exhibit PCWT2.

Further, overall sales figures have not been provided in the evidence and the ones provided in the applicant's submissions,¹⁸ are illegible due to the way in which they have been presented. Accordingly, I am not able to ascertain with any accuracy the sales figures for the relevant period, and the extent of use during this period. Overall, I find that the applicant's evidence is not sufficient to establish that the distinctiveness of the earlier mark has been enhanced through use.

Likelihood of confusion

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

41. I have found as follows:

- At least some of the goods are identical.
- The average consumer is a member of the general public who will pay a medium degree of attention during the purchasing process.

¹⁸ Filed on 6 March 2025.

- The purchasing process will be predominantly visual, although I do not discount an aural component.
- The marks are visually, aurally and conceptually similar to a low degree.
- The earlier mark is inherently distinctive to between a low to medium degree. On this point, it is acknowledged that a weaker degree of distinctive character in an earlier mark does not preclude a finding of confusion.¹⁹

42. The identity of the goods is clearly a factor in favour of the applicant. However, taking all of the above factors into account, I consider it unlikely that the marks will be mistakenly recalled or misremembered as each other. This is particularly the case given the low degree of visual, aural and conceptual similarity between the marks and the fact that the average consumer will be paying a medium degree of attention during the purchasing process. The coinciding CROP'S / CROP is the first and only word in the applicant's mark (CROP'S), whereas it is the fifth and last word in the proprietor's mark (PEOPLE WHO GIVE A CROP). Thus, despite the coinciding element, I am of the view that the word 'CROP' does not play an independent distinctive or dominant role in the proprietor's mark. Rather, the average consumer will perceive the words in the proprietor's mark as a unit/phrase. As such, I find that the marks will convey different meanings overall,²⁰ which will assist the average consumer in distinguishing one mark from the other. Accordingly, I do not consider there to be a likelihood of direct confusion. As this finding applies where the goods are identical, it will also apply even if I had undertaken a full assessment and found that they are only similar.

43. I will now go on to consider indirect confusion. I acknowledge that a finding of indirect confusion should not be made merely because the two marks share a common element. Furthermore, it is not sufficient that a mark merely calls to mind another mark:²¹ This is mere association not indirect confusion.

¹⁹ See *L'Oréal SA v OHIM*, Case C-235/05 P.

²⁰ *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch), [paragraph 20-21].

²¹ *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17.

44. Indirect confusion was described in the following terms by Iain Purvis QC (as he then was), sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc.*²²

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

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

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

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand 16 extension (terms such as ‘LITE’, ‘EXPRESS’, ‘WORLDWIDE’, ‘MINI’ etc.).

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

²² BL O/375/10.

45. I bear in mind that this list is not exhaustive.

46. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at [16] that “a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion”. Arnold LJ agreed, pointing out that there must be a “proper basis” for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion. He added that, “trade mark law was about consumers’ unwitting assumptions, not what they could find out if they thought to check.” Accordingly, it is necessary for me to bear this in mind when undertaking the assessment and considering whether the common element CROP’S / CROP, is sufficiently powerful when weighed against the differences, and that despite the differences, the marks give rise to a belief that the two entities are connected, leading to a likelihood of confusion.

47. Having recognised the differences between the marks, I consider it unlikely that the average consumer will conclude that they originate from the same or economically linked undertakings. I consider it more likely that the common use of CROP’S / CROP, in the context of some of the goods at issue, such as fruit and vegetables, is more likely to be viewed as coincidence rather than indicating linked undertakings. In my view, the marks are not consistent with a brand extension or variant. Consequently, I do not consider there to be a likelihood of indirect confusion.

48. For the avoidance of doubt, even if I had found there to be some enhancement to the distinctiveness of the earlier mark (which, at best, would take it to a medium degree of inherent distinctiveness overall), I would have reached the same conclusion bearing in mind the differences between the marks and the medium level of attention being paid during the purchasing process.

CONCLUSION

49. The application for a declaration of partial invalidity under section 47(2)(a), based on section 5(2)(b) grounds fails in its entirety. Accordingly, the proprietor's mark will remain registered in respect of all the contested goods in classes 29 and 30.

50. For completeness, the mark will also remain registered in respect of all the uncontested goods in class 25.

COSTS

51. As the proprietor has been successful it is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 1/2023. In the circumstances, I award the proprietor the sum of £1,300, calculated as follows:

Considering the other side's statement and preparing a counterstatement:	£250
Considering and commenting on the applicant's evidence and written submissions:	£700
Filing written submissions in lieu:	£350
Total	£1,300

52. I therefore order CROP'S N.V. to pay Planted Ventures, LLC the sum of £1,300. This sum is to be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 16th day of February 2026

Sam Congreve
For the Registrar

Annex

- Class 25 Apparel, namely, shirts and headwear.
- Class 29 Frozen, prepared and packaged meals consisting primarily of meat, fish, poultry or vegetables; pre-packaged ready-to-eat prepared foods, namely, açai berry bowls containing processed açai berries.
- Class 30 Frozen, prepared and packaged meals consisting primarily of pasta, grain or rice; frozen pizzas; frozen pasta; noodle-based prepared meals.