

O/0206/26

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK APPLICATION
NO. WO0000001792363
BY OYLUM SINAİ YATIRIMLAR ANONİM ŞİRKETİ
TO REGISTER THE TRADE MARK:



IN CLASSES 29 & 30

AND

OPPOSITION THERETO
UNDER NO. 450379 BY
ALLEGRO SPÓŁKA Z OGRANICZONĄ ODPOWIEDZIALNOŚCIĄ

BACKGROUND & PLEADINGS

1. OYLUM SINAİ YATIRIMLAR ANONİM ŞİRKETİ (“the applicant”) has sought protection in the UK for the International Registration no. WO0000001792363 (“the contested mark”) in respect of the mark shown on the front page of this decision with a UK designation date of 28 March 2024. The contested mark was accepted and published in the Trade Marks Journal for opposition purposes on 30 August 2024 for the following goods:

Class 29: Meat, fish, poultry and game; processed meat products; dried pulses; soups, bouillon; processed olives, olive paste; milks of animal origin; milks of herbal origin; milk products; butter; edible oils; dried, preserved, frozen, cooked, smoked or salted fruits and vegetables; tomato paste; prepared nuts and dried fruits as snacks; hazelnut spreads and peanut butter; tahini (sesame seed paste); eggs and powdered eggs; potato chips.

Class 30: Coffee, cocoa; coffee or cocoa based beverages, chocolate-based beverages; pasta, stuffed dumplings, noodles; pastries and bakery products based on flour; desserts based on flour and chocolate; bread, simit [Turkish ring-shaped bagel covered with sesame seeds], poğaçça [Turkish bagel], pita, sandwiches, katmer [Turkish pastry], pies, cakes, baklava [Turkish dessert based on dough coated with syrup], kadayıf [Turkish dessert based on dough]; desserts based on dough coated with syrup; puddings, custard, kazandibi [Turkish pudding], rice pudding, keşkül [Turkish pudding]; honey, bee glue for human consumption, propolis for food purposes; condiments for foodstuff, vanilla (flavoring), spices, sauces (condiments), tomato sauce; yeast, baking powder; flour, semolina, starch for food; sugar, cube sugar, powdered sugar; tea, iced tea; confectionery, chocolate, biscuits, crackers, wafers; chewing gums; ice-cream, edible ices; salt; cereal-based snack food, popcorn, crushed oats, corn chips, breakfast cereals, processed wheat for


human consumption, crushed barley for human consumption, processed oats for human consumption, processed rye for human consumption, rice; molasses for food.

2. On 24 October 2024, Allegro Spółka z ograniczoną odpowiedzialnością (“the opponent”) opposed the application on the basis of Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”)¹. For the purposes of these opposition proceedings, the opponent relies upon Class 35 services as shown in paragraph 18 of this decision for each of the following UK comparable marks²:

Trade Mark no.	UK00917971996 ('996)
Trade Mark	ALLEGRO
Filing date	23 October 2018
Date of entry in register	9 December 2020

¹ 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.

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 EU trade mark (“EUTM”). As a result, the opponent’s earlier EUTM was automatically converted into a comparable UK trade mark. Comparable UK marks are now recorded on 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.

Trade Mark no.	UK00917971997 ('997)
Trade Mark	
Filing date	23 October 2018
Date of entry in register	24 September 2020

3. Under Section 6(1) of the Act, the opponent's marks clearly qualify as earlier trade marks. The earlier marks had not been registered for five years or more before the filing date of the application, and, as a result, they are not subject to the proof of use requirements as per Section 6A of the Act.
4. The opponent, in its notice of opposition, claims that the competing marks share the dominant and distinctive term "ALLEGRO" and that the respective goods and services are highly similar.
5. The applicant filed a counterstatement, denying the opponent's claims.

Papers Filed and Representation

6. The applicant filed written submissions on 7 July 2025, and the opponent filed written submissions in lieu of a hearing ("final submissions") on 10 September 2025. I have taken these into account in reaching my decision and will refer to them below, where necessary.
7. No hearing was requested and so this decision is taken following a careful consideration of the papers.
8. In these proceedings, the applicant is represented by ip21 Limited and the opponent by Forresters IP LLP.

DECISION

Section 5(2)(b)

9. Section 5(2)(b) of the Act states:

“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.”

10. Section 5A states:

“Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only.”

11. The following standard summary of the principles applicable to the assessment of the likelihood of confusion was approved by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Paris Europe Inc & Anor*, [2025] UKSC 25:

(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, in certain circumstances, be dominated by one or more of its components;

(f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite 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; and

(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 and Services

12. Section 60A of the Act provides:

“(1) For the purpose of this Act goods and services-

(a) are not to be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification.

(b) are not to be regarded as being dissimilar from each other on the ground that they appear in different classes under the Nice Classification.

(2) In subsection (1), the “Nice Classification” means the system of classification under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, which was last amended on 28 September 1975.”

13. When making the comparison, all relevant factors relating to the goods in the specifications should be taken into account. In *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, the Court of Justice of the European Union (“CJEU”) stated that:

“23. In assessing the similarity of the goods or services concerned, [...], all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or complementary.”

14. Guidance on this issue was also given by Jacob J (as he then was) in *British Sugar Plc v James Robertson & Sons Limited* (“*Treat*”) [1996] RPC 281. At [296], he identified the following relevant factors:

- “(a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;
- (d) The respective trade channels through which the goods or services reach the market;
- (e) In the case of self-serve consumer items, where in practice they are respectively found, or likely to be found, in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
- (f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.”

15. In *YouView TV Ltd v Total Ltd*, [2012] EWHC 3158 (Ch), paragraph 12, Floyd J (as he then was) gave the following guidance on construing the words used in specifications:

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

to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question.”

16. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU held that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods or services. The General Court ('GC') clarified the meaning of “complementary” goods or services in *Boston Scientific Ltd v OHIM*, Case T-325/06, at paragraph 82:

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

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

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

18. The competing goods and services to be compared are shown in the following table:

Earlier Services	Contested Goods
Class 35: Retailing, including via computer networks and the internet, of the following goods: Dietetic food and substances adapted for medical or veterinary use, Food for babies, dietary supplements for humans and animals, Meat, Fish, poultry, Game, Meat extracts, Preserved, frozen, dried and cooked fruit and vegetables, Jellies, Jams, Compotes,	Class 29: Meat, fish, poultry and game; processed meat products; dried pulses; soups, bouillon; processed olives, olive paste; milks of animal origin; milks of herbal origin; milk products; butter; edible oils; dried, preserved, frozen, cooked, smoked or salted fruits and vegetables; tomato paste; prepared nuts and dried fruits as snacks;

<p>Eggs, Milk, Cheese, Butter, Yoghurt and other milk products, Edible oils and fats, Meat and Charcuterie, Fish, Seafood and molluscs, Not live, Dairy products and dairy substitutes, Bird eggs and egg products, Edible oils and fats, Processed fruits, Vegetables and mushrooms (including nuts and pulses), soups and stocks, Meat extracts, Processed insects and larvae, Natural and artificial sausage casings, Coffee, tea, Artificial coffee and substitutes therefor, rice, Macaroni and Noodles, Tapioca and sago, Flour and preparations made from cereals, Bread loaves, Ices, Sorbets and other edible ices, Sugar, Honey, Treacle, Yeast, Baking powder, Salt, Spices, Spices, dried herbs, Vinegar, sauces and other condiments, Ice (frozen water), Flavourings, Bakery products, Sugar, Natural sweeteners, Goods made from bee products, Ice, Ices, Frozen yoghurt and sorbets, Processed seeds, starches and goods made thereof, baking preparations and yeasts, raw and unprocessed agricultural, Horticultural and, Forestry and aquacultural products, Raw and unprocessed grains and seeds, Fresh fruits and vegetables, fresh herbs, Natural plants and flowers, Flower bulbs, Seedlings and seeds for planting, Live animals, Living creatures for breeding, Foodstuffs and beverages for animals, Malt, Agricultural and aquacultural crops, Horticulture and forestry products, Forage, Products for animal litter, Beers and brewery products, Nonalcoholic drinks, Mineral and aerated waters, Fruit drinks and fruit juices, Syrups and other non-alcoholic preparations for making beverages, Alcoholic beverages, Not including beer, Alcoholic preparations for making beverages.</p>	<p>hazelnut spreads and peanut butter; tahini (sesame seed paste); eggs and powdered eggs; potato chips.</p> <p>Class 30: Coffee, cocoa; coffee or cocoa based beverages, chocolate-based beverages; pasta, stuffed dumplings, noodles; pastries and bakery products based on flour; desserts based on flour and chocolate; bread, simit [Turkish ring-shaped bagel covered with sesame seeds], poğaça [Turkish bagel], pita, sandwiches, katmer [Turkish pastry], pies, cakes, baklava [Turkish dessert based on dough coated with syrup], kadayıf [Turkish dessert based on dough]; desserts based on dough coated with syrup; puddings, custard, kazandibi [Turkish pudding], rice pudding, keşkül [Turkish pudding]; honey, bee glue for human consumption, propolis for food purposes; condiments for foodstuff, vanilla (flavoring), spices, sauces (condiments), tomato sauce; yeast, baking powder; flour, semolina, starch for food; sugar, cube sugar, powdered sugar; tea, iced tea; confectionery, chocolate, biscuits, crackers, wafers; chewing gums; ice-cream, edible ices; salt; cereal-based snack food, popcorn, crushed oats, corn chips, breakfast cereals, processed wheat for human consumption, crushed barley for human consumption, processed oats for human consumption, processed rye for human consumption, rice; molasses for food.</p>
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19. The opponent submitted that the competing goods and services are similar to medium-high degree, providing a comparison table (shown in Annex 1 at the end of this decision) highlighting the earlier terms it considers to be the closest to the contested ones. Also, the opponent submits that the competing goods and services are different in nature, purpose and method of use; but that they are complementary, sharing the same channels and users.
20. The applicant submits that the competing goods and services are dissimilar in nature, purpose, end-user perception, commercial context, and trade channels, highlighting the differences between the competing goods and services; which I have taken into account, but will not reproduce here.
21. The applicant has highlighted in its submissions that the contested specification contains only tangible food products in Classes 29 and 30 as opposed to the opponent's retail services. However, I note that Section 60A of the Act stipulates that goods and services are not to be regarded as similar or dissimilar simply because they fall in the same or different Class.
22. For the purpose of considering the issue of similarity of goods and services, it is permissible to consider groups of terms collectively where they are sufficiently comparable to be assessed in essentially the same way for the same reasons.³
23. In addition to the case law cited above, I will set out below the relevant principles and case law pertaining to the comparison between retail services and goods.
24. In *Oakley, Inc v OHIM*, Case T-116/06, at paragraphs 46-57, the GC held that although retail services are different in nature, purpose, and method

³ *Separode Trade Mark* BL O-399-10 and *BVBA Management, Training en Consultancy v BeneluxMerkenbureau* [2007] ETMR 35 at paragraphs 30 to 38.

of use to goods, retail services for particular goods may be complementary to those goods, and distributed through the same trade channels, and therefore similar to a degree.

25. In *Tony Van Gulck v Wasabi Frog Ltd*, Case BL O/391/14, Mr Geoffrey Hobbs Q.C. (as he then was) as the Appointed Person reviewed the law concerning retail services v goods. He said at paragraph 9 of his judgment that:

“9. The position with regard to the question of conflict between use of BOO! for handbags in Class 18 and shoes for women in Class 25 and use of MissBoo for the Listed Services is considerably more complex. There are four main reasons for that: (i) selling and offering to sell goods does not, in itself, amount to providing retail services in Class 35; (ii) an application for registration of a trade mark for retail services in Class 35 can validly describe the retail services for which protection is requested in general terms; (iii) for the purpose of determining whether such an application is objectionable under Section 5(2)(b), it is necessary to ascertain whether there is a likelihood of confusion with the opponent’s earlier trade mark in all the circumstances in which the trade mark applied for might be used if it were to be registered; (iv) the criteria for determining whether, when and to what degree services are ‘*similar*’ to goods are not clear cut.”

26. However, on the basis of the European Courts’ judgments in *Sanco SA v OHIM*, Case C-411/13P and *Assembled Investments (Proprietary) Ltd v OHIM*, Case T-105/05, at paragraphs 30 to 35 of the judgment, upheld on appeal in *Waterford Wedgwood Plc v Assembled Investments (Proprietary) Ltd*, Case C-398/07P, Mr Hobbs concluded that:

“i) Goods and services are not similar on the basis that they are complementary if the complementarity between them is insufficiently pronounced that, from the consumer’s point of view, they are unlikely to be offered by one and the same undertaking;

- ii) In making a comparison involving a mark registered for goods and a mark proposed to be registered for retail services (or vice versa), it is necessary to envisage the retail services normally associated with the opponent's goods and then to compare the opponent's goods with the retail services covered by the applicant's trade mark;
- iii) It is not permissible to treat a mark registered for 'retail services for goods X' as though the mark was registered for goods X;
- iv) The General Court's findings in *Oakley* did not mean that goods could only be regarded as similar to retail services where the retail services related to exactly the same goods as those for which the other party's trade mark was registered (or proposed to be registered)."

27. Bearing in mind the above principles, I will proceed to my assessment below.

Preferred Approach

28. The specifications for the earlier marks are identical. Thus, I will conduct a single comparison, in which my analysis will be based on terms that the earlier marks share and rely upon. As a result, my findings below apply to the comparison of all the competing marks.

Class 29

Meat, fish, poultry and game; processed meat products; dried pulses; soups, bouillon; processed olives, olive paste; milks of animal origin; milks of herbal origin; milk products; butter; edible oils; dried, preserved, frozen, cooked, smoked or salted fruits and vegetables; tomato paste; prepared nuts and dried fruits as snacks; hazelnut spreads and peanut butter; tahini (sesame seed paste); eggs and powdered eggs; potato chips

29. The opponent claims similarity between the earlier services and the above contested goods providing the closest comparators for each of the

contested terms (shown in Annex 1 at the end of this decision). I agree with the opponent's approach and adopt the same comparisons between the competing terms. For each of the applicant's Class 29 goods, the opponent offers a retail service in respect of that good (or a good that encompasses it). The earlier services "*Retailing, including via computer networks and the internet, of the following goods:...*" in Class 35 are provided with the aim of selling various foodstuff. That said, the nature of the services differs from the contested goods. The services are offered by a retail operator for the sale and purchase of goods by the end users, whereas the goods are the physical products as such. Moreover, the method of use and purpose differentiates between the goods and the services in question. The goods are intended for consumption/sustenance, whereas the respective services are intended to enable the end users to purchase such goods by interacting with them either online or at physical premises. At an overarching level, the ordinary method of retailing such goods to the public creates a link as the contested goods will be necessary for the delivery of the retail services, and consumers are likely to believe that the same commercial undertaking is responsible for both the goods and the services. Therefore, I find that complementarity in this case is sufficiently pronounced. Taking all these factors into consideration, there is a medium degree of similarity between the respective goods and services.

Class 30

Coffee; noodles; honey, bee glue for human consumption, propolis for food purposes; condiments for foodstuff, vanilla (flavoring), spices, sauces (condiments), tomato sauce; yeast, baking powder; flour, semolina, starch for food; sugar, cube sugar, powdered sugar; tea; ice-cream, edible ices; salt; cereal-based snack food, popcorn, crushed oats, corn chips, breakfast cereals, processed wheat for human consumption, crushed barley for human consumption, processed oats for human consumption, processed rye for human consumption, rice; molasses for food

30. I have considered the opponent's comparisons provided with its submissions and agree that these form the closest terms for the above contested terms. For each of the contested goods, the opponent offers a retail service in respect of that good (or a good that encompasses it). Following the same analysis and rationale detailed in the preceding paragraph, I find that the competing goods and services are similar to a medium degree.

Bread, simit [Turkish ring-shaped bagel covered with sesame seeds], poğaçā [Turkish bagel], pita, sandwiches, katmer [Turkish pastry], pies, cakes, baklava [Turkish dessert based on dough coated with syrup], kadayif [Turkish dessert based on dough]

31. In *Waterford* it was clarified that *Oakley* did not mean that goods could only be regarded as similar to retail services where the retail services related to exactly the same goods as those for which the other party's trade mark is registered. Thus, I note that the earlier retail services of goods, such as "*Flour and preparations made from cereals, Bakery products*", are normally associated with the contested terms "*bread, simit [Turkish ring-shaped bagel covered with sesame seeds], poğaçā [Turkish bagel], pita, sandwiches, katmer [Turkish pastry], pies, cakes, baklava [Turkish dessert based on dough coated with syrup], kadayif [Turkish dessert based on dough]*". The nature and purposes are different, but the trade channels and the users of the retail services are the same. The goods and services are not in competition, but there is a degree of complementarity, given the average consumer's awareness of own brands. Consequently, there is sufficient relatedness between the goods and services to conclude that they are similar to a medium degree.

Pastries and bakery products based on flour

32. The opponent compares these goods to its retail services for "*Macaroni and Noodles, Tapioca and sago, Flour and preparations made from cereals, Processed seeds, starches and goods made thereof*". I agree and

also consider that the retailing of “*Bakery products*” would be also a closer comparator in this instance. The analysis carried out in the previous paragraph also applies here, and I find there to be a medium degree of similarity.

Desserts based on flour and chocolate; desserts based on dough coated with syrup; puddings, custard, kazandibi [Turkish pudding], rice pudding, keşkül [Turkish pudding]

33. The opponent compares these goods to its retail services “*Retailing, including via computer networks and the internet, of the following goods: Flour and preparations made from cereals, Bakery products, Bread loaves, Ices, Sorbets and other edible ices, Sugar, Honey, Treacle, sauces and other condiments, Ice (frozen water), Flavourings, Sugar, Natural sweeteners, Goods made from bee products, Ice, Ices, Frozen yoghurt and sorbets*”. I agree. The analysis carried out above also applies here, and I find there to be a medium degree of similarity.

Confectionery, biscuits, crackers, wafers

34. The opponent submits that these goods are similar to its “*Retailing, including via computer networks and the internet, of the following goods: Flour and preparations made from cereals, Bread loaves, Ices, Sorbets and other edible ices, Sugar, Honey, Treacle, Yeast, Baking powder, Flavourings, Bakery products, Sugar, Natural sweeteners, Goods made from bee products, Ice, Ices, Frozen yoghurt and sorbets*”. While the nature and the purpose of the goods and services will differ, there will be overlap in the trade channels, as consumers buy the goods from supermarkets or off-license shops, and the users will be the same. The consumer will be familiar with retailers selling own-brand goods so there is a degree of complementarity. Overall, I find there to be a medium degree of similarity between the goods and services.

Cocoa

35. The opponent compares the contested goods to its “*Retailing, including via computer networks and the internet, of the following goods: Coffee, tea, Artificial coffee and substitutes, Flavourings, Bakery products, Sugar, Natural sweeteners, Processed seeds, starches and goods made thereof*”. The nature and purposes are different, but the trade channels and the users of the retail services are the same. Although the contested term does not appear to be listed in the earlier specification, I keep in mind the principles in *Waterford*. Thus, I consider that the contested goods are likely to be sold alongside, and as alternatives to the earlier retailed goods, and are therefore likely to be the subject of the same retail services as “*Coffee, tea, Artificial coffee and substitutes, Flavourings*”. Consequently, it is plausible that the average consumer may believe that an undertaking selling “Cocoa” is the same, or connected to, an undertaking that provides the retail services in relation to “*Coffee, Artificial coffee and substitutes, Flavourings*”. There is a degree of complementarity in play between those goods and services. Consequently, I find that there is a low degree of similarity.

Pasta

36. Following the same approach in the previous paragraph, the contested goods will be similar to a low degree to the earlier terms “*macaroni and noodles; flour and preparations made from cereals*” due to the overlap in trade channels, users, and a degree of complementarity.

Coffee or cocoa based beverages, chocolate-based beverages; chocolate-based beverages; iced tea

37. I acknowledge that there is more likely to be an overlap in trade channels between the contested goods and the earlier services because the latter relate to drinks products, such as “*Beers and brewery products, Nonalcoholic drinks, Mineral and aerated waters, Fruit drinks and fruit*”

juices” and the contested goods are also drinks products. However, the only other point of overlap is users. The nature, method of use and purposes differ and there is no competition or complementarity. At best, I consider these goods and services to be similar to a low degree.

Chocolate; Chewing gums; stuffed dumplings

38. While some of the goods covered by the earlier retail services are foodstuff, this does not automatically mean that they are similar to the above contested goods. This is because the complementarity between entirely different foodstuffs is too insufficiently pronounced in order to warrant a finding of similarity between them. There may be an overlap in trade channels and users. However, the purpose, method of use and nature of the goods and services clearly differ. There is no competition or complementarity. Despite the overlap in trade channels and users, the contested goods are too distant from the opponent’s retailed goods to warrant a finding of similarity between them, and they are dissimilar.
39. The likelihood of confusion does not arise in relation to the contested goods and services which are dissimilar to the earlier mark’s services.⁴

Average Consumer and the Purchasing Act

40. 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: *Lloyd Schuhfabrik Meyer*, Case C-342/97. In *Iconix Luxembourg Holdings SARL v Dream Paris Europe Inc & Anor*, [2025] UKSC 25, the Supreme Court approved the comments of Arnold LJ

⁴ Case C-398/07, *Waterford Wedgwood plc v OHIM*; and *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA, para 49.

in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)* [2024] EWCA Civ 262, where he pointed out that:

(a) Consumers who are ill-informed or careless, or consumers with specialised knowledge or who are excessively careful are excluded from consideration;

(b) The average consumer provides a standard which enables the courts to strike a balance between the competing interests involved, such as trade mark owners, their competitors and consumers;

(c) The average consumer is neither a single hypothetical person nor a mathematical average; assessment from the perspective of the average consumer does not involve a statistical test. There is no single meaning rule and if, having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, a finding of infringement may properly be made;

(d) Assessment from the perspective of the average consumer is intended to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by enabling courts and tribunals to determine such issues so far as possible without the need for evidence;

(e) The average consumer's level of attention varies according to the category of goods or services in question; and

(f) the average consumer rarely has the opportunity to make direct comparisons between trade marks (or between trade marks and signs) and must instead rely upon the imperfect picture of the trade mark they have kept in their mind."

41. The goods at issue will be purchased and consumed by the general public. These are inexpensive goods purchased through primarily visual means, most often selected from traditional bricks and mortar establishments or

their online equivalents. In physical stores, the goods will be displayed on shelves where they will be self-selected by the consumer. When the purchase takes place online, the goods will be selected after viewing an image on a webpage. Whilst the average consumer will predominantly purchase them following a visual inspection, I do not discount aural recommendations. Given the low cost of the goods, the level of care and attention paid when purchasing them will be no more than medium.

42. As to the retail services in Class 35, the average consumer will be a member of the general public, and the selection process will be based on factors such as availability of the desired product range, price, any special offers, the location of the shop, quantity, and quality. Primarily, the average consumer's encounter with the given services will be on a visual level, such as signage on premises, promotional material, and website use. The process, therefore, will be primarily visual, but word of mouth or recommendations may also play a role. The degree of attention paid to the selection of a retailer will be between low and medium, taking into account commercial considerations.

Comparison of Trade Marks

43. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a 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 marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

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

to the circumstances of the case, to assess the likelihood of confusion.”

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

45. The marks to be compared are:

Earlier Marks	Contested Mark
<p data-bbox="429 853 687 891"><u>Earlier mark '996</u></p> <p data-bbox="443 936 673 981">ALLEGRO</p> <p data-bbox="429 1064 687 1102"><u>Earlier mark '997</u></p> <p data-bbox="357 1137 759 1272">allegro</p>	

Overall Impression

46. The earlier mark '996 “ALLEGRO” is a word mark. Registration of a word mark protects the word itself.⁵

47. The earlier mark '997 consists of the word “allegro” presented in a standard typeface and orange font in a lower case. The overall impression will be dominated by the word “allegro” with the colour, case, and the typeface of the mark playing a lesser role.

⁵ See *LA Superquimica v EUIPO*, T-24/17, para 39; and *Bentley Motors Limited v Bentley 1962 Limited*, BL O/158/17, paragraph 16.

48. The contested mark is a figurative mark. At the top, there is a light brown round device with a white dashed border. Inside this device, the word elements “Master Baker” are presented in a stacked, italicised cursive typeface and dark brown font, extending beyond the edges of the device. Underneath the device, the more prominent and slightly stylised word “ALLEGRO” appears in a large, bold and upper case font against a white background. The word “ALLEGRO” is underlined with a curved horizontal line in the same dark brown colour covering all the letters except for the first and last. The applicant argues that the figurative and stylised “MASTER BAKER” element will be more dominant “*due to its placement, font, and background*” and the “ALLEGRO” element is “*clearly subordinate*”. However, I agree with the opponent’s submissions that the word elements “Master Baker” will have a laudatory connotation, and I consider that they will also have allusive qualities in the context of the contested goods, such as pastries and bakery goods. On this basis, I consider that the word element “ALLEGRO”, being the more distinctive element, will have the greatest weight in the overall impression, primarily due to its prominent size in the mark and presentation (namely upper case, bold font, and the underline). In contrast, the “Master Baker” word elements together with the figurative elements (i.e. the device and stylisation) will make a lesser contribution to the overall impression.

Visual comparison

Earlier word mark ‘996 and contested mark

49. The contested mark incorporates the word of the earlier mark, which is also the most dominant element in the contested mark. Although it is not legitimate to perform a comparison between a word mark and a stylised mark by considering specific ways in which the words might be presented, the typeface⁶ and colour⁷ in which the contested mark is presented in this

⁶ See *HERNO S.p.A. v Miss Sparrow Ltd*, BL O/954/22.

⁷ See *Specsavers* [2014] EWCA Civ 1294; and *J.W. Spear & Sons Ltd v Zynga, Inc.* [2015] EWCA Civ 290.

case do not provide a point of distinction in themselves. That said, I note that the presence/absence of the word elements “MASTER BAKER” alongside the stylisation and the round device in the competing marks will be all points of difference. Taking into account the overall impression of the marks and the similarities and differences, I consider that the marks are visually similar to a medium degree.

Earlier word mark ‘996 and contested mark

50. Again, in this case, the marks share the identical word element “ALLEGRO”. However, the marks differ in colours, the word elements “MASTER BAKER”, stylisation, and the round device. Thus, I find them to be visually similar to between a low and medium degree.

Aural Comparison

51. Both of the earlier marks consist of three syllables which will be pronounced as “AL-LE-GRO”. On the other hand, the verbal elements in the contested mark are seven syllables and will be verbalised as “MAS-TER-BA-KER-AL-LE-GRO”. The verbal elements “AL-LE-GRO” in the competing marks will be identically pronounced. However, the competing marks differ in the presence/absence of the syllables “MAS-TER-BA-KER”. Taking everything into account, including the overall impressions of the marks, I find that there is no more than a medium degree of aural similarity.

Conceptual Comparison

52. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer. This is highlighted in numerous judgments of the GC and the CJEU including *Ruiz Picasso v OHIM* [2006] ECR I-643; [2006] E.T.M.R 29. The assessment must, therefore, be made from the point of view of the average consumer.
53. On the one hand, the opponent made the following submissions:

“28. Conceptually, the Contested Mark will be seen as the name of a baker / chef – that is a “Master Baker” that goes by the name of “ALLEGRO”. The words “Master Baker” are laudatory and non-distinctive in relation to food and drink products in classes 29 and 30 (as well as the retail of these goods in class 35). Thus, consumers will look elsewhere within the Contested Mark to identify trade origin and conceptual meaning. The prominence given to the word “ALLEGRO” (by virtue of this word appearing in capital letters and being underlined) ensures that this is where consumers will naturally look to identify conceptual meaning for the Contested Mark. The only logical conclusion is that consumers will see the Contested Mark as referring to a name of a baker called Allegro. Thus, conceptual similarity is unavoidable, with the distinctive conceptual element being shared between the parties’ trade marks.

29. It is noted that the Earlier Word Mark and the Earlier Logo Mark are formed of the word “ALLEGRO” which can (in certain circumstances) be defined as something being performed at brisk speed, particularly in relation to a musical performance. Despite this, consumers of food and drink products will not understand either of the parties’ marks as referring to this. Consumers look for sensible, appropriate and relevant meanings for trade marks in relation to the goods and services that they are used in respect of. It is unreasonable to apply an unrelated definition to the parties’ marks when they are viewed in the realm of food and drink. Instead, when selecting food and drink products under the Contested Mark, consumers will see the “ALLEGRO” element as a name of a baker / chef. This is the obvious result given the structure of the Contested Mark (i.e. the subordinate “Master Baker” wording and the emphasis placed on the “ALLEGRO” element).”

54. On the other hand, the applicant submitted that:

“Turning to the question of conceptual similarity, the respective trade marks cannot be considered similar. The first Registration evokes the concept of movement to be performed allegro, given the Merriam-Webster definition of allegro, which is a musical composition of movement in allegro tempo. Whereas the Contested Application evokes the concept of a baker who has mastered their craft enough that the movement in creation is lively, upbeat and alive. Given that both marks have a meaning, and each refers to a different concept, we contest that they must be considering conceptually dissimilar.”

55. The opponent argues that it is unreasonable to apply an unrelated definition to the parties’ marks when assessed within the context of food and drink. On this point, I bear in mind the comments of Professor Philip Johnson, sitting as the Appointed Person, in the case of *EMILIANA*, BL O/054/22, in response to the criticism that the hearing officer had not assessed the conceptual similarity of the word marks at issue in the context of the goods. He stated that:

“When assessing the conceptual similarity of two marks this is usually done without reference to the goods or services in question (the similarity of goods coming into the assessment at the stage of determining the overall likelihood of confusion).”⁸

The conceptual message that a mark conveys to the average consumer, shall, therefore, be assessed on the immediate and instinctive reaction to the marks on first impression,⁹ without consideration to the goods/services to which they relate.

56. In light of the above submissions, the parties disagree on the conceptual meaning of the competing marks, even though they both recognise that

⁸ Paragraph 62.

⁹ *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17.

“ALLEGRO” has a technical musical meaning,¹⁰ referring to a fast/lively tempo. The applicant suggests that the shared word element will be interpreted metaphorically in such a way that would contribute to the meaning of the mark as whole, forming a complete unit. However, in the absence of evidence, I consider that such interpretation goes one step further in the conceptualisation process, which requires intellectual analysis or time to reflect on the mark in order to extract a unitary message from the word elements of the mark. On the other hand, the opponent submitted that the contested mark will be seen as a whole evoking the concept of a master baker who is named ALLEGRO. Nevertheless, the opponent has not adduced any evidence to demonstrate that a significant proportion of the average consumers in the UK would be familiar with “ALLEGRO” as a name or attach this meaning to the word. Thus, I am unconvinced that this would be the case and, given that I do not consider it to be a fact too notorious, I am not prepared to take judicial notice of it.¹¹

57. Given these considerations, and in the absence of any evidence, only a small minority of consumers will ascribe a meaning to the word element “ALLEGRO”. Instead, I am of the view that the word “ALLEGRO” will be seen as an invented word with no obvious meaning. Further, the contested mark contains the word elements “MASTER BAKER”, which are well-known and ordinary words, and together they will be construed to mean a highly skilled professional in baking. Thus, I do not consider that the significant proportion of the consumers will be able to extract a meaning from the contested mark as a whole. In addition, the contested mark contains a device which the average consumer will perceive as such with no added concept. Consequently, the conceptual position as to the shared element “ALLEGRO” is neutral. However, the contested mark also conveys the meaning associated with the words “MASTER BAKER” and, therefore, there is a conceptual difference between the marks. It is

¹⁰ The applicant also refers me to the Merriam-Webster dictionary’s definition of the term. I note that this is an American source, and it is unlikely to be a reliable indicator of how the average consumer in the UK understands the term.

¹¹ See *Cherokee*, BL O/048/08.

important to note that the conceptual difference resides in the less distinctive elements within the contested mark.

Distinctive Character of the Earlier Trade Marks

58. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97, paragraph 22 and 23, the CJEU stated that:

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

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).”

59. Registered trade marks possess varying degrees of inherent distinctive character from the very low, because they are suggestive of, or allude to, a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. Although the distinctiveness of a mark can be enhanced by virtue

of the use that has been made of it, the opponent has not filed any evidence of use. Consequently, I have only the inherent position to consider.

60. The opponent in its submissions argues that the earlier mark possesses a “*normal*” level of distinctiveness.
61. In this case, the earlier mark ‘996 consists of the word element “ALLEGRO”, which will be perceived by consumers as an invented word and has no suggestive or allusive significance in relation to the services for which it is registered. Consequently, given the opponent’s submissions, I find that the earlier mark ‘996 will be inherently distinctive to, at least, a medium degree, while the stylisation of the earlier mark ‘997 does not, in my view, raise the inherent distinctiveness to any noticeable extent.

Likelihood of Confusion

62. In assessing the likelihood of confusion, I must adopt the global approach set out in the case law to which I have already referred above in this decision. Such a global assessment is not a mechanical exercise. I must also have regard to the interdependency principle, that 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.¹² It is essential to keep in mind the distinctive character of the opponent’s trade mark since the more distinctive the trade mark, the greater the likelihood of confusion. I must also keep in mind that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon imperfect recollection.¹³
63. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other. Indirect confusion is where the consumer notices the differences between the marks but concludes that

¹² See *Canon Kabushiki Kaisha*, paragraph 17.

¹³ See *Lloyd Schuhfabrik Meyer*, paragraph 27.

the later mark is another brand of the owner of the earlier mark or a related undertaking.

64. In *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch), Arnold J. considered the impact of the CJEU's judgment in *Bimbo*, on the court's earlier judgment in *Medion v Thomson*. He stated:

“18 The judgment in *Bimbo* confirms that the principle established in *Medion v Thomson* is not confined to the situation where the composite trade mark for which registration is sought contains an element which is identical to an earlier trade mark, but extends to the situation where the composite mark contains an element which is similar to the earlier mark. More importantly for present purposes, it also confirms three other points.

19 The first is that the assessment of likelihood of confusion must be made by considering and comparing the respective marks — visually, aurally and conceptually — as a whole. In *Medion v Thomson* and subsequent case law, the Court of Justice has recognised that there are situations in which the average consumer, while perceiving a composite mark as a whole, will also perceive that it consists of two (or more) signs one (or more) of which has a distinctive significance which is independent of the significance of the whole, and thus may be confused as a result of the identity or similarity of that sign to the earlier mark.

20 The second point is that this principle can only apply in circumstances where the average consumer would perceive the relevant part of the composite mark to have distinctive significance independently of the whole. It does not apply where the average consumer would perceive the composite mark as a unit having a different meaning to the meanings of the separate components. That includes the situation where the meaning of one of the components is qualified by another component, as with a surname and a first name (e.g. BECKER and BARBARA BECKER).”

21 The third point is that, even where an element of the composite mark which is identical or similar to the earlier trade mark has an independent distinctive role, it does not automatically follow that there is a likelihood of confusion. It remains necessary for the competent authority to carry out a global assessment taking into account all relevant factors.”

65. In *Kurt Geiger v A-List Corporate Limited*, BL O/075/13, Mr Iain Purvis Q.C. (as he then was) as the Appointed Person pointed out that the level of ‘distinctive character’ is only likely to increase the likelihood of confusion to the extent that it resides in the element(s) of the marks that are identical or similar. He said:

“38. The Hearing Officer cited *Sabel v Puma* at paragraph 50 of her decision for the proposition that ‘the more distinctive it is, either by inherent nature or by use, the greater the likelihood of confusion’. This is indeed what was said in *Sabel*. However, it is a far from complete statement which can lead to error if applied simplistically.

39. It is always important to bear in mind what it is about the earlier mark which gives it distinctive character. In particular, if distinctiveness is provided by an aspect of the mark which has no counterpart in the mark alleged to be confusingly similar, then the distinctiveness will not increase the likelihood of confusion at all. If anything it will reduce it.”

66. In *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, Iain Purvis Q.C. (as he then was), sitting as the Appointed Person, explained that:

“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 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).”

These examples are not exhaustive. Rather, they were intended to be illustrative of the general approach.¹⁴

¹⁴ See *Liverpool Gin Distillery and others v Sazerac Brands, LLC and others* [2021] EWCA Civ 1207.

67. In *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17, James Mellor Q.C., sitting as the Appointed Person, stressed that a finding of indirect confusion should not be made merely because the two marks share a common element. In this connection, he pointed out that it is not sufficient that a mark merely calls to mind another mark. This is mere association not indirect confusion.
68. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor KC (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.
69. Earlier in this decision I have concluded that:
- the similarity between the competing goods and services ranges from medium to a low degree;
 - the average consumer of the goods and services will be a member of the general public; and the selection process is predominantly visual, without discounting aural considerations. The level of attention paid for the goods will no more than medium. As for the services, the average consumer will pay a between low and medium degree of attention in choosing the service provider;
 - the earlier mark ‘996 and the contested mark are visually similar to a medium degree, aurally similar to a medium degree, and conceptually different;
 - the earlier mark ‘997 and the contested mark are visually similar to between a low and medium degree, aurally similar to a medium degree, and conceptually different;
 - the earlier mark ‘996 will be inherently distinctive to, at least, a medium degree, while the stylisation of the earlier mark ‘997 does

not, in my view, raise the inherent distinctiveness to any noticeable extent.

70. Based on my analysis above, I am of the view that the earlier mark '996 is the closest in terms of similarity to the contested mark, and I do not find the other earlier mark to put the opponent in any better position. Therefore, my assessment on the likelihood of confusion will be based on the opponent's mark '996.
71. Taking into account the above factors, I find that there is no likelihood of direct confusion for the similar goods and services. Notwithstanding the principle of imperfect recollection and the shared word element "ALLEGRO", the average consumer would not overlook the presence/absence of the diverge elements in the competing marks. Although I have found that the words "MASTER BAKER" could be perceived as laudatory and allusive for the contested goods (especially in the case of pastries and bakery goods), I am of the view that they would not simply be overlooked. They still contribute to the distinctiveness and overall impression of the mark, albeit to a lesser extent than the word "ALLEGRO". Therefore, the average consumer will not mistakenly recall or misremember the competing marks as each other.
72. I must now consider whether the average consumers would believe that there is an economic connection between the marks, or that they are variant marks from the same undertaking, as a result of their shared common element "ALLEGRO". I bear in mind that there should be a proper basis for a finding of a likelihood of indirect confusion.¹⁵ Having identified that the marks are different, the consumers will assume that the respective marks originate from the same or economically linked undertakings. This is because both marks contain the identical shared word element "ALLEGRO" which is the dominant and distinctive element in both marks with the greatest weight in the overall impression. Whether consciously or

¹⁵ See *Liverpool Gin Distillery* above.

unconsciously, this will lead the average consumer through the mental process described in *L.A. Sugar*. Although the applicant's mark includes the laudatory and allusive word elements "MASTER BAKER" and the figurative elements, the average consumer may perceive the mark as a sub-brand or brand extension of the opponent's mark. Moreover, the figurative elements in the contested mark are likely to be perceived as a variation of the brand with additional stylisation and decorative elements. In light of the overall impression of the marks, I should add that any conceptual differences arising between the marks will not suffice in this present case to neutralise the visual¹⁶ and aural similarities in the marks.¹⁷ In these circumstances, I find that the average consumer would assume a commercial association between the parties, believing that the respective goods come from the same or economically linked undertakings. Consequently, I find there is a likelihood of indirect confusion.

73. For completeness, based on the principle of interdependence, the above finding extends to the goods and services that I found to be similar to any degree.

Final remarks

74. Although I have determined that there is a likelihood of confusion based on the earlier '996 mark, as a matter of completeness, I note that I would have also found a likelihood of confusion between the contested mark and the earlier mark '997, on much the same line of reasoning, particularly when bearing in mind my findings on the similarity of those respective marks and the similarity of the competing goods and services.

¹⁶ See *New Look Limited v OHIM, joined cases T-117/03 to T-119/03 and T-171/03*.

¹⁷ See *Nokia Oyj v OHIM, Case T-460/07*.

Outcome

75. **Part of the opposition has been successful.** Therefore, subject to any successful appeal, the application will be refused for the following terms:

Class 29: Meat, fish, poultry and game; processed meat products; dried pulses; soups, bouillon; processed olives, olive paste; milks of animal origin; milks of herbal origin; milk products; butter; edible oils; dried, preserved, frozen, cooked, smoked or salted fruits and vegetables; tomato paste; prepared nuts and dried fruits as snacks; hazelnut spreads and peanut butter; tahini (sesame seed paste); eggs and powdered eggs; potato chips.

Class 30: Coffee, cocoa; coffee or cocoa based beverages, chocolate-based beverages; pasta, [...], noodles; pastries and bakery products based on flour; desserts based on flour and chocolate; bread, simit [Turkish ring-shaped bagel covered with sesame seeds], poğaçā [Turkish bagel], pita, sandwiches, katmer [Turkish pastry], pies, cakes, baklava [Turkish dessert based on dough coated with syrup], kadayıf [Turkish dessert based on dough]; desserts based on dough coated with syrup; puddings, custard, kazandibi [Turkish pudding], rice pudding, keşkül [Turkish pudding]; honey, bee glue for human consumption, propolis for food purposes; condiments for foodstuff, vanilla (flavoring), spices, sauces (condiments), tomato sauce; yeast, baking powder; flour, semolina, starch for food; sugar, cube sugar, powdered sugar; tea, iced tea; confectionery, [...], biscuits, crackers, wafers; [...]; ice-cream, edible ices; salt; cereal-based snack food, popcorn, crushed oats, corn chips, breakfast cereals, processed wheat for human consumption, crushed barley for human consumption, processed oats for human consumption, processed rye for human consumption, rice; molasses for food.

76. **Part of the opposition has failed.** Therefore, subject to any successful appeal, the application will proceed to registration for the following terms:

Class 30: Chocolate; Chewing gums; stuffed dumplings.

COSTS

77. The opponent has enjoyed the greater degree of success, and it is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 1/2023. The sum is calculated as follows:

Official fee	£100
Preparing a statement and considering the counterstatement	£250
Preparing submissions in lieu	£350
Total	£700

78. I, therefore, order OYLUM SINAİ YATIRIMLAR ANONİM ŞİRKETİ to pay to Allegro Spółka z ograniczoną odpowiedzialnością the sum of £700. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 12th day of March 2026

Dr Stylianos Alexandridis

For the Registrar,

The Comptroller General

ANNEX 1

Class 29

Contested Application	Earlier Marks
Meat, fish, poultry and game; processed meat products;	Retailing, including via computer networks and the internet, of the following goods: Meat, Fish, poultry, Game, Meat extracts, Meat and Charcuterie, Meat extracts
dried pulses;	Retailing, including via computer networks and the internet, of the following goods: Flowers and vegetables, Preserved, frozen, dried and cooked fruit and vegetables, Processed fruits, Vegetables and mushrooms (including nuts and pulses), Fresh fruits and vegetables
soups, bouillon;	Retailing, including via computer networks and the internet, of the following goods: soups and stocks
processed olives, olive paste;	Retailing, including via computer networks and the internet, of the following goods: Preserved, frozen, dried and cooked fruit and vegetables, Jellies, Jams, Edible oils and fats, Vinegar, sauces and other condiments
milks of animal origin; milks of herbal origin; milk products;	Retailing, including via computer networks and the internet, of the following goods: Milk, and other milk products, Dairy products and dairy substitutes
butter;	Retailing, including via computer networks and the internet, of the following goods: Butter, Dairy products
edible oils;	Retailing, including via computer networks and the internet, of the following goods: Edible oils and fats
dried, preserved, frozen, cooked, smoked or salted fruits and vegetables;	Retailing, including via computer networks and the internet, of the following goods: Preserved, frozen, dried and cooked fruit and vegetables, Processed fruits, Vegetables and mushrooms (including nuts and pulses),
tomato paste;	Retailing, including via computer networks and the internet, of the following goods: Preserved, frozen, dried and cooked fruit and vegetables, Jellies, Jams, Edible oils and fats, Processed fruits, Vegetables and mushrooms (including nuts and pulses), soups and stocks

prepared nuts and dried fruits as snacks;	Retailing, including via computer networks and the internet, of the following goods: Processed fruits, Vegetables and mushrooms (including nuts and pulses), Preserved, frozen, dried and cooked fruit and vegetables
hazelnut spreads and peanut butter;	Retailing, including via computer networks and the internet, of the following goods: Jellies, Jams, Compotes, Edible oils and fats, sauces and other condiments
tahini (sesame seed paste);	Retailing, including via computer networks and the internet, of the following goods: Vegetables and mushrooms (including nuts and pulses), sauces and other condiments, Processed seeds, starches and goods made thereof
eggs and powdered eggs;	Retailing, including via computer networks and the internet, of the following goods: Eggs, Bird eggs and egg products
potato chips	Retailing, including via computer networks and the internet, of the following goods: Preserved, frozen, dried and cooked fruit and vegetables, Processed fruits, Vegetables

Class 30

Contested Application	Earlier Marks
Coffee, cocoa; coffee or cocoa based beverages, chocolate-based beverages;	Retailing, including via computer networks and the internet, of the following goods: Coffee, tea, Artificial coffee and substitutes, Flavourings, Bakery products, Sugar, Natural sweeteners, Processed seeds, starches and goods made thereof
pasta, stuffed dumplings, noodles;	Retailing, including via computer networks and the internet, of the following goods: Macaroni and Noodles, Tapioca and sago, Flour and preparations made from cereals, Processed seeds, starches and goods made thereof
pastries and bakery products based on flour;	Retailing, including via computer networks and the internet, of the following goods: Macaroni and Noodles, Tapioca and sago, Flour and preparations made from cereals, Processed seeds, starches and goods made thereof

desserts based on flour and chocolate;	Retailing, including via computer networks and the internet, of the following goods: Flour and preparations made from cereals, Bakery products,
bread, simit [Turkish ring-shaped bagel covered with sesame seeds], poğaça [Turkish bagel], pita, sandwiches, katmer [Turkish pastry], pies, cakes, baklava [Turkish dessert based on dough coated with syrup], kadayıf [Turkish dessert based on dough];	Retailing, including via computer networks and the internet, of the following goods: Flour and preparations made from cereals, Bread loaves
desserts based on dough coated with syrup;	Retailing, including via computer networks and the internet, of the following goods: Flour and preparations made from cereals, Bakery products,
puddings, custard, kazandibi [Turkish pudding], rice pudding, keşkül [Turkish pudding];	Retailing, including via computer networks and the internet, of the following goods: Flour and preparations made from cereals, Bread loaves, Ices, Sorbets and other edible ices, Sugar, Honey, Treacle, sauces and other condiments, Ice (frozen water), Flavourings, Bakery products, Sugar, Natural sweeteners, Goods made from bee products, Ice, Ices, Frozen yoghurt and sorbets
honey, bee glue for human consumption, propolis for food purposes;	Retailing, including via computer networks and the internet, of the following goods: Honey, Goods made from bee products
condiments for foodstuff, vanilla (flavoring), spices, sauces (condiments), tomato sauce;	Retailing, including via computer networks and the internet, of the following goods: Spices, Vinegar, sauces and other condiments, Flavourings
yeast, baking powder;	Retailing, including via computer networks and the internet, of the following goods: Yeast, Baking powder, baking preparations and yeasts
flour, semolina, starch for food;	Retailing, including via computer networks and the internet, of the following goods: Flour and preparations made from cereals, Processed seeds, starches and goods made thereof, baking preparations and yeasts
sugar, cube sugar, powdered sugar;	Retailing, including via computer networks and the internet, of the following goods: Sugar

tea, iced tea;	Retailing, including via computer networks and the internet, of the following goods: tea, Nonalcoholic drinks
confectionery, chocolate, biscuits, crackers, wafers;	Retailing, including via computer networks and the internet, of the following goods: Flour and preparations made from cereals, Bread loaves, Ices, Sorbets and other edible ices, Sugar, Honey, Treacle, Yeast, Baking powder, Flavourings, Bakery products, Sugar, Natural sweeteners, Goods made from bee products, Ice, Ices, Frozen yoghurt and sorbets,
chewing gums;	Retailing, including via computer networks and the internet, of the following goods: Ices, Sorbets and other edible ices, Flavourings, Bakery products, Sugar, Natural sweeteners, Goods made from bee products, Ice, Ices, Frozen yoghurt and sorbets,
ice-cream, edible ices;	Retailing, including via computer networks and the internet, of the following goods: Sorbets and other edible ices, Ice, Ices, Frozen yoghurt and sorbets
salt;	Retailing, including via computer networks and the internet, of the following goods: Salt
cereal-based snack food, popcorn, crushed oats, corn chips, breakfast cereals, processed wheat for human consumption, crushed barley for human consumption, processed oats for human consumption, processed rye for human consumption, rice;	Retailing, including via computer networks and the internet, of the following goods: Flour and preparations made from cereals, Bread loaves, Bakery products, Processed seeds, starches and goods made thereof, baking preparations and yeasts
molasses for food.	Retailing, including via computer networks and the internet, of the following goods: Honey, Treacle, Yeast, Vinegar, sauces and other condiments, Flavourings, Sugar, Natural sweeteners