O/0247/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NUMBER 4073742
BY RAJA MOHAMMED JAMAAL SIDDIQUE
TO REGISTER THE FOLLOWING TRADE MARK:

IN CLASSES 29, 31, 35 and 39

AND

AN OPPOSITION THERETO UNDER NUMBER 450621
BY SD FOODTECH LTD

BACKGROUND AND PLEADINGS

1. On 9 July 2024, RAJA MOHAMMED JAMAAL SIDDIQUE ("the applicant") applied to register in the UK the trade mark shown on the cover page of this decision ("the contested mark"). The application was accepted and published for opposition purposes on 20 September 2024, and registration is sought for the following goods and services:[1]

   Class 29: Potato fries; French fries; Frozen french fries; Fried potatoes; Potato chips; Chips (Potato -);Potato fritters; Potato snacks; Frozen chips.

   Class 31: Canned foodstuffs consisting of meat for young animals.

   Class 35: Retail services relating to the sale of potato fries, French fries, frozen French fries, fried potatoes, potato chips, chips (Potato-), potato fritters, potato snacks and frozen chips.

   Class 39: Food delivery; Transport of food; Transportation of food; Refrigerated transport of food; Refrigerated transport of frozen goods; Storage of frozen food in warehouses; Frozen food storage services; all the aforesaid relating to french fries, frozen French fries, fried potatoes, potato chips, chips(potato-), potato fritters, potato snacks and frozen chips.

2. On 7 November 2024, SD FOODTECH LTD ("the opponent") opposed the application in full under section 5(2)(b) of the Trade Marks Act 1994 ("the Act").

3. The opponent relies upon the following UK trade mark for its opposition:

[1] This is the current specification after the applicant filed a Form TM21b to limit its specification. This was filed on 30 April 2025.

UK00003948493

NOVA CHEF

Filing date: 22 August 2023

Registration date: 29 December 2023

4. For the purposes of these proceedings, the opponent is relying on all of the goods and services, for which the earlier mark is registered:

Class 29: Meat, fish, poultry and game; burgers; meat extracts; preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs; milk, cheese, butter, yogurt and other milk products; oils and fats for food; desserts; fruits and vegetables, all being preserved, dried, cooked, or processed;spreads and filings for use in sandwiches and other breadstuffs; prepared meals; snack foods; stir fried vegetable and meat-based meals; salad; prepared salad; meat, fish, poultry and game; prepared curry meals and sauces.

Class 30: Rice; pasta and noodles; flour and preparations made from cereals; bread, pastries and confectionery; chocolate; ice cream, sorbets and other edible ices; seasonings, spices, preserved herbs; vinegar, sauces and other condiments; ice [frozen water] confectionery; desserts; ice creams; frozen yoghurts; sorbets; processed grains, starches, and goods made thereof; baking preparations and yeasts; prepared desserts; prepared meals; pizza; salad dressings; preparations made from cereals; sweets; candy and confectionery; biscuits; cakes; bakery goods; pastry; canapes; cereal snacks; filled sandwiches; pasta; noodles; pancakes; pies; wraps; pasta salad; burgers contained in bread buns; hot dog sandwiches; aromatic preparations for food; pastries, cakes, tarts and biscuits (cookies).

Class 43: Provision of food and drink; information, advisory and consultancy services relating to the aforesaid.

5. Given the filing dates, the opponent's mark is an earlier mark, in accordance with section 6 of the Act. However, as it has not been registered for five years or more at the filing date of the application, it is not subject to the proof of use requirements specified within section 6A of the Act. As a consequence, the opponent may rely upon all of the goods and services for which the earlier mark is registered without having to establish genuine use.

6. Under section 5(2)(b), the opponent claims in its statement of grounds that the applicant's mark is highly similar to the opponent's mark and that the goods and services are identical, similar and complementary to those registered under the opponent's earlier registration. It contends that as a result, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the opponent's earlier registration.[2]

7. The applicant filed a defence and counterclaim denying the grounds of the opposition.[3]

8. The applicant is represented by Dolleymores and the opponent is represented by Withers & Rogers LLP. Only the applicant filed evidence during the evidence rounds. Neither party requested a hearing but both parties filed written submissions in lieu.

9. 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] Form TM7 dated 7 November 2024, page 6, Q9.
[3] Form TM8 and counterstatement dated 17 January 2025, pages 7 and 8 of counterstatement.

EVIDENCE

10. The applicant filed evidence in the form of the witness statement of Victoria Anne Bennett dated 2 July 2025. Victoria Anne Bennett is a partner at Saunders & Dolleymores (trading as Dolleymores). The witness statement is accompanied by 4 exhibits, VAB1 to VAB4. The evidence includes state of the register evidence, as well as use of marks that include the word NOVA being used for food goods and related services. There is also evidence of how the applicant is using its mark.

Preliminary issues

State of the register evidence

11. In relation to the state of the register evidence, I observe that the applicant has provided numerous examples of entries on the UKIPO register of registered marks that contain the word 'Nova' in relation to either food or services for food.

12. In Ms Bennet's witness statement, she claimed that she had conducted searches prior to applying for the mark on behalf of the applicant. She also confirms:

> "*The purpose of sharing the results of my search is to demonstrate in these opposition proceedings that SD Foodtech Ltd do not have a monopoly in the element NOVA, and that they themselves appear to have chosen to adopt a trade mark, NOVA CHEF, presumably knowing that there are/were other earlier trade marks on the UK Trade Marks Register that incorporate the element NOVA and other NOVA signs in use, in their field of interest, in the UK*."

13. However, I must take into account the case of *Zero Industry Srl v OHIM*, Case T-400/06, where the General Court ("GC") stated that:

> "*73. As regards the results of the research submitted by the applicant, according to which 93 Community trade marks are made up of or include the word 'zero', it should be pointed out that the Opposition Division found, in that regard, that '… there are no indications as to how many of such trade marks are effectively used in the market'. The applicant did not dispute that finding*

before the Board of Appeal but none the less reverted to the issue of that evidence in its application lodged at the Court. It must be found that the mere fact that a number of trade marks relating to the goods at issue contain the word 'zero' is not enough to establish that the distinctive character of that element has been weakened because of its frequent use in the field concerned (see, by analogy, Case T 135/04 GfK v OHIM – BUS(Online Bus) [2005] ECR II 4865, paragraph 68, and Case T 29/04 Castellblanch v OHIM – Champagne Roederer (CRISTAL CASTELLBLANCH) [2005] ECR II 5309, paragraph 71). "

14. The fact that there are a number of trade marks that contain the word 'Nova' for food goods and food related services,[4] by itself does not assist the applicant. The applicant has filed some evidence to demonstrate that a few of these marks are actually in use in the marketplace. I can see that the applicant has filed evidence of the mark "Mamie Nova" used on yoghurts and desserts which are for sale online on the websites "Epiceriecorner.co.uk"[5] and "Frenchclick.co.uk".[6] However, I have no further information regarding the "Mamie Nova" mark to assist me in determining how widespread the mark is, nor the number of consumers that have been exposed to the mark. In evidence is also pasta sold under the "La Nova" mark from Morrisons, Ocado (as per the disclaimer)[7] and "Trolly.co.uk". There are also 7 customer reviews on the Ocado webpage. However, this evidence fails to show that the use of 'Nova' on the relevant market has led consumers to become accustomed to differentiating between marks using this word. I observe that there is also evidence of the word 'Nova' used in relation to a place in London where there are many restaurants and eateries, as well as 'Nova' being used in relation to restaurant and catering services in the signs "Nova Restaurant" and "Nova the outsiders". However, in total these are 4 examples of actual use of the word Nova in relation to either different types of food or food services. It is impossible to determine from the limited evidence that use on the relevant market has led consumers to become accustomed to differentiating between marks using the word 'Nova', leading to a weakening of the distinctive character of these elements.

[4] Exhibits VAB 1 and VAB 2
[5] Exhibit VAB 3, pages 31 – 33
[6] Exhibit VAB 3, pages 38 – 58
[7] Exhibit VAB 3, page 37

Instead, the outcome of this opposition will be determined after making a global assessment whilst taking into account all the relevant factors.

Use of the applicant's mark

15. The applicant has provided evidence of its mark on packaging for French fries.[8] The applicant did not particularise further on this evidence. In the eventuality that the applicant filed this evidence to show that they market the contested mark differently from the opponent, I note that I must not take into account the actual way that either party has used their marks in the marketplace or the kinds of goods or services that those marks have been used in relation to thus far. Rather, I must consider all of the circumstances in which the mark applied for might be used if it were registered.[9] Therefore, this evidence is not material to the decision that I must make, and I place little weight on it.

No actual confusion argument

16. Ms Bennet, in her witness statement, submits that there have not been any instances of confusion between the marks at hand.[10] Although I acknowledge Ms Bennet's comments, I must clarify that the absence of actual confusion will not have any bearing on whether there exists a likelihood of confusion between the applicant's mark and the opponent's mark. Whilst evidence of actual confusion may be persuasive where it exists, the absence of confusion in the marketplace is rarely significant.[11] This is because the absence of confusion may be attributable to the earlier mark having only been used to a limited extent, in relation to only some of the goods or services for which it is registered, or in such a way that there has been no possibility of the one being mistaken for the other.[12]

[8] Exhibit VAB4.
[9] *O2 Holdings Limited, O2 (UK) Limited v Hutchison 3G UK Limited*, Case C- 533/06, [66].
[10] Witness statement of Victoria Anne Bennet dated 2 July 2025, at [10].
[11] *The European Limited v The Economist Newspaper Ltd* [1998] FSR 283.
[12] *Roger Maier and Another v ASOS*, [2015] EWCA Civ 220.

DECISION

Section 5(2)(b)

17. Sections 5(2)(b) and 5A of the Act state:

> "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.
>
> 5A 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."

Relevant Law

18. 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:

> 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 great 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 and services

19. In comparing the respective specifications, all relevant factors should be considered, as per *Canon*, where the Court of Justice of the European Union ("CJEU") stated at paragraph 23 of its judgment:

"In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, 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 are complementary."

20. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, for assessing similarity were:

(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.

21. In *Gérard Meric v OHIM*, Case T- 133/05, the GC stated that:

"29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut für Lernsysteme v OHIM – Educational Services* (ELS) [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark."

22. Further, in *Kurt Hesse v OHIM*,[13] the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods.

23. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06, the GC stated that "complementary" means:

"[...] 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."

24. In *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch), Floyd J. (as he then was)

[13] Case C-50/15 P

stated that:

> "[…] 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."

25. In *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1)* [2024] UKSC 36, Lord Kitchin set out the proper approach to considering terms in specifications:

> "365. […] The correct approach, as a matter of principle, in considering a specification of services which is defined by terms which are not clear or precise, is to confine the terms used to the substance or core of their possible meanings: see, for example, *Reed Executive plc v Reed Business Information Ltd* [2004] EWCA Civ 159; [2004] RPC 40, at para 43. So too, if a specification of goods is defined by terms which are ambiguous, then it should be confined to those goods which are clearly covered. These principles are consistent with first, the requirement that the specifications of goods and services must be clear and precise so that others know what they can and cannot do; and secondly, general fairness because any ambiguity is the responsibility of the owner of the mark. If despite this, the words used are still unclear so that they cannot be interpreted, then it is permissible to disregard them. But, in my opinion, that will rarely be the case."

26. In *Avnet Incorporated v Isoact Limited* [1998] FSR 16, Jacob J (as he then was) said at [19]:

"[…] definitions of services … are inherently less precise than specifications of goods. […] 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."

27. I bear in mind that it is permissible to group goods together for the purposes of assessment: *Separode Trade Mark*:[14]

"The determination must be made with reference to each of the different species of goods listed in the opposed application for registration; if and to the extent that the list includes goods which are sufficiently comparable to be assessable for registration in essentially the same way for essentially the same reasons, the decision taker may address them collectively in his or her decision."

28. The goods and services to be compared are shown in the table below:

The opponent's goods and services	The applicant's goods and services
Class 29 Meat, fish, poultry and game; burgers; meat extracts; preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs; milk, cheese, butter, yogurt and other milk products; oils and fats for food; desserts; fruits and vegetables, all being preserved, dried, cooked, or processed; spreads and filings for use in sandwiches and other breadstuffs; prepared meals; snack foods; stir fried vegetable and meat-based meals;	Class 29 Potato fries; French fries; Frozen french fries; Fried potatoes; Potato chips; Chips (Potato -);Potato fritters; Potato snacks; Frozen chips.

[14] BL O/399/10

salad; prepared salad; meat, fish, poultry and game; prepared curry meals and sauces.	
Class 30 Rice; pasta and noodles; flour and preparations made from cereals; bread, pastries and confectionery; chocolate; ice cream, sorbets and other edible ices; seasonings, spices, preserved herbs; vinegar, sauces and other condiments; ice [frozen water] confectionery; desserts; ice creams; frozen yoghurts; sorbets; processed grains, starches, and goods made thereof; baking preparations and yeasts; prepared desserts; prepared meals; pizza; salad dressings; preparations made from cereals; sweets; candy and confectionery; biscuits; cakes; bakery goods; pastry; canapes; cereal snacks; filled sandwiches; pasta; noodles; pancakes; pies; wraps; pasta salad; burgers contained in bread buns; hot dog sandwiches; aromatic preparations for food; pastries, cakes, tarts and biscuits (cookies).	
	Class 31 Canned foodstuffs consisting of meat for young animals.
	Class 35 Retail services relating to the sale of potato fries, French fries, frozen

	French fries, fried potatoes, potato chips, chips (Potato-), potato fritters, potato snacks and frozen chips.
	Class 39 Food delivery; Transport of food; Transportation of food; Refrigerated transport of food; Refrigerated transport of frozen goods; Storage of frozen food in warehouses; Frozen food storage services; all the aforesaid relating to french fries, frozen French fries, fried potatoes, potato chips, chips(potato-), potato fritters, potato snacks and frozen chips.
Class 43 Provision of food and drink; information, advisory and consultancy services relating to the aforesaid.	

29. I note that the applicant refers to goods and services that were included within the specification prior to its amendment, however, I will only consider submissions relating to the competing specifications as they now stand.

30. In relation to the goods and services comparison, the applicant made the following submissions:

"[…] the Applicant admitted that there is identity and/or similarity in respect of the Opponent's goods and services and the Applicant's goods and services covered by Classes 29, 30 and 43.

[…] the Applicant denied that there is identity and/or similarity in respect of the Opponent's goods and services in Classes 29, 30 and 43, and the Applicant's

goods and services in Classes 7, 31, 35 and 39. The Applicant put the Opponent to strict proof their claim. [sic]".[15]

31. The opponent made specific submissions in relation to each of the contested classes of goods and services which I will refer to below.

32. The applicant admits identity or similarity for goods and services in class 29, however, given the importance of the interdependency factor in the overall assessment for a likelihood of confusion, I shall continue to conduct a comparison as the applicant has not identified which terms it considers identical and which it considers similar, nor to what degree.

Class 29

Potato fries; French fries; Frozen french fries; Fried potatoes; Potato chips; Chips (Potato -); Potato fritters; Potato snacks; Frozen chips.

33. The opponent submits that:

> "*The Applicant's Goods in Class 29 are identical (per Meric) to those covered by the Earlier Mark. For example, the Earlier Mark covers the term "preserved, frozen, dried and cooked fruits and vegetables" which encapsulates, and would be considered to be the same as, all the applied for goods in Class 29*."[16]

34. I agree with the opponent, the above applied for goods are all *identical under Meric* to the opponent's terms "*preserved, frozen, dried and cooked […] vegetables; […] vegetables, all being preserved, dried, cooked, or processed; snack foods*" as the applied for goods are all encompassed within the opponent's broader terms.

Class 31

Canned foodstuffs consisting of meat for young animals.

[15] Applicant's written submissions in lieu, paragraphs 4, and 5, which is replicated from paragraphs 16 and 17 of its counterstatement.
[16] Opponent's submissions in lieu, paragraph 22.

35. In relation to the applicant's class 31 goods the opponent argues:

> "*The term "meat, fish, poultry and game" (in Class 29) is similar to the applied for goods in Class 31. Whilst the applied for goods are "canned" and directed towards animals, as it is possible and popular for people to feed animals "raw" foods diets, these have a similar nature, end user, method of use and trade channels*."[17]

36. Despite the opponent's arguments, I consider the applied for term to be ***dissimilar*** to the opponent's terms which it has identified above in class 29. This is because although both are meat, meat for humans as opposed to canned foodstuff for animals will have different quality and standards. Therefore, they have a different nature, method of use and intended purpose in line with who the meat is aimed at, and furthermore, due to the different consumers the trade channels will differ. The goods are not in competition as they are for different users and they are not complementary as they are not essential to one another, and moreover, consumers would not expect them to derive from the same undertaking.

Class 35

Retail services relating to the sale of potato fries, French fries, frozen French fries, fried potatoes, potato chips, chips (Potato-), potato fritters, potato snacks and frozen chips.

37. With regards to the opposed services in class 35, the opponent states:

> *"As for the applied for services in Class 35, these are complementary to the registered goods in Class 29 (in particular, "preserved, frozen, dried and cooked fruits and vegetables") for the reasons discussed above at paragraph 22 and because those who produce food products do retail them to other business [sic] or the public at large."*[18]

[17] Opponent's written submissions, paragraph 23
[18] Opponent's written submissions, paragraph 24

38. When comparing goods against the retailing of goods, I bear in mind *Oakley, Inc v OHIM*, Case T -116/06, at paragraphs 46-57 , in which the GC held that although retail services are different in nature, purpose and method 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.

39. Further, 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 Wedgewood Plc v. Assembled Investments (Proprietary) Ltd* Case C-398/07P, Mr Hobbs concluded in *Tony Van Gulck v Wasabi Frog Ltd,* Case BL O/391/14 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 <u>normally</u> 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).

40. The opponent's food terms in class 29 are merely alternative ways of describing the goods subject to the applicant's retail services. The nature clearly differs as the

opponent's terms refer to foodstuff and the applicant's terms refer to services for the retail of those goods. The method of use and intended purpose also differ as one is used to purchase the goods whilst the goods themselves are eaten for taste or to prevent hunger. Nevertheless, the goods and services share trade channels and are complementary as the goods are essential to the use of the services and it is reasonable for consumers to expect them to derive from the same undertaking. Users will also overlap. Overall, I consider the competing goods and services to be similar to a *medium degree*.

Class 39

41. In relation to the applicant's class 39 terms the opponent submits:

> "*As to the Applicant's Services in Class 39, they have the same nature as the registered goods in Class 43, namely the means and processes for providing food to consumers. They have the same end users, namely those who want to receive or be provided with food products. There is overlap in each of the respective services purposes as orders are received to prepare and provide food and there is an expectation that these orders are delivered. Furthermore, establishments which provide food often have their own means of storing food and transporting and/or delivering it, and so there is an overlap in trade channels. It is also important to consider that the services in Classes 39 and 43 could be considered indispensable to one another to the extent that the consumer would believe, or look for a brand/business, that can provide all of these services. Resultantly, the applied for Class 39 services are at the very least highly similar to the registered services in Class 43*."[19]

Food delivery; Transport of food; Transportation of food; all the aforesaid relating to french fries, […], fried potatoes, potato chips, chips(potato-), potato fritters, potato snacks […].

[19] Opponent's written submissions, paragraph 26

42. Comparing the above applied for terms against the opponent's class 43 term *"Provision of food and drink*" I observe that although the nature and method of use of the applicant's services differ, there is an overlap in user. Furthermore, in my experience it is not uncommon for restaurants, for example, to provide their own food and drink delivery service. This therefore results in an overlap in trade channels. Whilst I acknowledge that the core purpose of the respective services is different (preparing/providing the food on one hand and delivering of food on the other), there is a degree of competition between them. This is because a consumer, may decide to have food delivered to their home rather than choosing to visit a restaurant, or vice versa. Accordingly, I find that there is a *medium degree* of similarity between the respective services.

Refrigerated transport of food; Refrigerated transport of frozen goods; all the aforesaid relating to french fries, frozen French fries, fried potatoes, potato chips, chips(potato-), potato fritters, potato snacks and frozen chips.

43. In relation to the above services, these are all services for the transportation of refrigerated or frozen foods, specifically French fries and various other potato chips. When compared with the opponent's class 43 services for the "*provision of food and drink*", the services differ in nature, method of use and intended purpose. The applied for services are not the type typically provided by restaurant services as they are not the transportation of edible foods for consumer consumption, but rather, the transportation of foods in frozen form that are likely to be provided to retailers or restaurants. As such, trade channels of the competing services differ as do the end users. Neither are the services in competition. I find that the competing services are dissimilar.

Food Deliveries; Transport of food; Transportation of food; all the aforesaid relating to […], frozen French fries, […] and frozen chips.

44. The same reasoning applies to the above terms as to the terms in the above paragraph (43) as these class 39 services are all services relating to the transportation of frozen fries and frozen chips.

Storage of frozen food in warehouses; Frozen food storage services; all the aforesaid relating to french fries, frozen French fries, fried potatoes, potato chips, chips(potato-), potato fritters, potato snacks and frozen chips.

45. In my view there is no obvious reason why services for the storage of frozen food are similar to the opponent's class 43 services. They differ in nature, method of use, intended purpose, trade channels and users. Neither are the services in competition nor are they complementary. I have considered restaurants or catering companies that store frozen foods prior to cooking them and providing them to others, however, these are activities that are conducted in relation to the operation of restaurant services, not services that are offered to third parties.

46. As some degree of similarity between the goods and services is necessary to engage the test for a likelihood of confusion, my findings above mean that the opposition must fail against goods and services of the application that I have found to be dissimilar, namely:[20]

Class 31: Canned foodstuffs consisting of meat for young animals

Class 39: *Food Deliveries; Transport of food; Transportation of food; all the aforesaid relating to […], frozen French fries, […] and frozen chips; Refrigerated transport of food; Refrigerated transport of frozen goods; Storage of frozen food in warehouses; Frozen food storage services; all the aforesaid relating to french fries, frozen French fries, fried potatoes, potato chips, chips(potato-), potato fritters, potato snacks and frozen chips.*

The average consumer and the purchasing act

47. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods and services. I must then

[20] *eSure Insurance v Direct Line Insurance,* [2008] ETMR 77 CA, paragraph 49.

determine the manner in which the goods and services are likely to be selected by the average consumer.

48. In *Iconix Luxembourg Holdings SARL v Dream Paris Europe Inc & Anor*, [2025] UKSC 25, the Supreme Court approved the comments of Arnold LJ 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 and 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.

49. In relation to the average consumer the applicant states that:

> "*The goods in Classes 29 and 30 are of the type that are brought on a fairly frequent basis and are for human consumption. Consumers are likely to focus on the cost, quality, appearance and taste of the product. The goods will typically be available from physical retail stores, such as supermarkets, or wholesale outlets selling food in larger quantities or their on-line equivalents. The purchasing process will in the main be visual in nature. There is nothing technical about the goods and they are not prohibitively expensive. <u>The average consumer of these products is likely to be the general public and a medium degree of attention will be used in the selection process</u>."*[21] (My emphasis added).

50. I observe that the opponent also identified the general public as the average consumer and asserts that a medium level of attention will be paid at most.[22]

51. I accept the parties' submissions and agree that the average consumer for the goods and services at issue will be a member of the general public.

52. Food goods and food related services will be targeted primarily at the general public. I consider that flavour, taste and quality will likely be considered by the consumer when purchasing food or food services such as food deliveries and the retailing of food, and as such a <u>*medium level*</u> of attention is likely to be paid in respect of the same.

53. The food goods and the services for selling/providing food will likely be purchased visually, either being displayed on the shelves of retail stores, or advertised on shop frontages, menus, or via website advertisements, etc. However, I bear in mind that the goods and services may sometimes be the subject of word-of-mouth recommendations and therefore aural considerations are also borne in mind.

[21] Applicant's written submissions in lieu, paragraph 36
[22] Opponent's written submissions in lieu, paragraph 29

Distinctive character of the earlier mark

54. 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 *WindsurfingChiemsee v Huber and Attenberger* [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)."

55. 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 distinctiveness of a mark can be enhanced by virtue of the use that has been made of it.

56. No evidence has been provided by the opponent for me to determine whether the mark's distinctiveness has been enhanced by use, as such, I have only the inherent position to consider.

57. The earlier mark is a word only mark that contains the words "NOVA CHEF". I acknowledge that the dictionary definition of NOVA is '*a type of star that shines more brightly for a few months as a result of a nuclear explosion'*.[23] However, neither party contends that the mark will be understood as such, and absent of any evidence to the contrary, I do not believe that the average consumer would immediately grasp this meaning, instead, I consider that consumers will perceive it as an invented word.[24] As for the word CHEF, this is likely to be seen as allusive of the goods and related food services. However, as NOVA will be understood to be an invented word, overall, the mark will enjoy between a medium and high level of distinctiveness.

Comparison of trade marks

58. It is clear from *Sabel* 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 the trade marks, bearing in mind their distinctive and dominant components. The CJEU states at paragraph 34 of its judgment in *Bimbo*, 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 relevant 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."

59. It would be wrong, therefore, to dissect the trade marks artificially, although it is necessary to take into account the distinctive and dominant components of the trade 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.

[23] Cambridge English dictionary
[24] See to this effect BL O/048/08

60. Whilst I will not repeat them here, I have taken the parties submissions in relation to the competing marks into account.

61. The marks to be compared are as follows:

The opponent's earlier mark	The applicant's contested mark
NOVA CHEF	

Overall Impression

62. The applicant's mark is a figurative mark and consists of the word 'NOVA' presented in black, bold, upper case letters in stylised font. The word 'NOVA' is positioned on a semi circular shaped gold background with black edging. At the top of the gold semi circle is a series of 5 stars. Below the word 'NOVA' are six words 'The Gold Standard in French Fries'. These words are presented in gold, mixed case letters against a black background with gold edging. While these words are certainly not negligible, they will be seen as a slogan and given their size and position, they will play a lesser role in the overall impression of the mark. Likewise, the stylised font and semi circular gold background will play a lesser role, as will the five stars which allude to the quality of the goods in conjunction with the slogan. As a result, the overall impression is dominated by the word 'NOVA'.

63. The opponent's mark is a word only mark comprising of the words 'NOVA CHEF'. There are no other elements to contribute to the overall impression of the mark which resides in the words themselves. However, I bear in mind that the word CHEF is likely to be seen as allusive of the goods and related food services, as such, the overall impression will predominately rest in the word NOVA with the word CHEF playing a lesser role.

Visual similarity

64. The marks coincide in the word NOVA, which dominates the overall impression of the competing marks, and is found at the beginning of each of the respective marks, a position where consumers will focus their attention.[25] However, all other aspects of the respective marks differ. As such, I consider the marks visually similar to no more than a medium degree.

Aural similarity

65. The marks coincide in the word NOVA which will be pronounced in the same way, using two syllables. However, they differ in the addition of the single syllable word CHEF in the earlier mark which will be pronounced in line with its dictionary definition. The contested mark instead contains the added words 'The Gold Standard in French Fries', whilst this will be viewed as a laudatory boast about the quality of the goods and related services, it does not render the words negligible or aurally invisible.[26] Consequently, I consider the marks to be similar to a low degree with the marks only overlapping in the first two syllables arising from the word NOVA.

Conceptual similarity

66. 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] e.c.r.-I-643; [2006] E.T.M.R 29.

67. As discussed above, the word NOVA will most likely be seen as an invented word, this will be the same for both marks. The word 'CHEF' in the opponent's mark will be attributed its normal dictionary meaning and acts as a point of conceptual difference. Another point of conceptual difference in the applicant's mark is the

[25] *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02
[26] *Purity Hemp Company Improving Life as Nature Intended* (Case BL O/115/22), paragraph 31

slogan ‘The Gold Standard in French Fries’ which is likely to evoke the concept that the French fries are the best you can get with the gold standard emphasised by the gold/yellow colour used for the mark. Equally, the five stars in the applicant’s mark could likely be seen as inferring five-star quality of the applicant’s goods and services. However, these concepts are low in distinctiveness and attributes very little in terms of conceptual messaging. Taking all this into account, I consider the common element NOVA will be understood as being conceptually neutral with the differing elements being conceptually dissimilar, but weak in distinctiveness as they are all allusive (and promotional) in relation to the goods and services.

Likelihood of confusion

68. 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 goods and services 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 respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the opponent’s trade mark, the average consumer for the goods and services, 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.

69. I have found the marks to be visually similar to no more than a medium degree and aurally similar to a low degree. Conceptually, I have found the shared element is conceptually neutral with the differing elements being conceptually dissimilar but weak in distinctiveness as they are all allusive and promotional. Furthermore, I have found the earlier mark to possess between a medium and high level of

distinctiveness overall. I have identified the average consumer to be the general public who will pay a medium level of attention, and the goods and services to be identical or similar to a medium degree.

70. Although the marks both contain the word NOVA there are enough visual differences, not least in the presence of the additional wording used in each of the respective marks, that they will not be directly confused for one another, notwithstanding the principle of imperfect recollection. As a result, I find there to be no direct likelihood of confusion.

71. I turn to consider indirect confusion. 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*:[27]

> "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 recognised 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

[27] BL O/375/10

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)."

72. These three categories are not exhaustive; rather, they were intended to be illustrative of the general approach, as has been confirmed by the Court of Appeal. I recognise that a finding of indirect confusion should not be made merely because the competing marks share a common element. In this connection, it is not sufficient that a mark merely calls to mind another mark: this is mere association not indirect confusion.[28]

73. 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.

74. Although consumers will notice the differences between the marks in the additional word(s) found in the respective marks that are not present in the other, i.e. CHEF in the earlier mark and 'The Gold Standard in French Fries' in the contested mark, they will also identify the shared element NOVA which is the dominant and distinctive element in each of the competing marks. The word CHEF in the earlier

[28] *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17

mark is likely to be perceived as being allusive of the goods and services, and therefore, will be fairly non-distinct, as is the laudatory slogan in the contested mark "The Gold Standard in French Fries". Consequently, given that the word NOVA is where the distinctiveness of the competing marks rest, I do not consider that the use of NOVA will be perceived as coincidental where the remaining elements of the respective marks are less distinctive. Rather it will be viewed as being determinative of brand origin, with the competing marks being seen as logical sub brands. The same can be said for the use of a gold semi-circle and the 5 stars within the later mark, which in my view will be seen as a brand alternative or re-branding.

CONCLUSION

75. The opposition under section 5(2)(b) has been successful in relation to the following goods and services which will not proceed to registration:

Class 29: Potato fries; French fries; Frozen french fries; Fried potatoes; Potato chips; Chips (Potato -); Potato fritters; Potato snacks; Frozen chips.

Class 35: Retail services relating to the sale of potato fries, French fries, frozen French fries, fried potatoes, potato chips, chips (Potato-), potato fritters, potato snacks and frozen chips.

Class 39: Food Deliveries; Transport of food; Transportation of food; all the aforesaid relating to french fries, […], fried potatoes, potato chips, chips(potato-), potato fritters, potato snacks […].

76. However, the opposition has failed against the following goods and services,[29] as a result these goods and services may proceed to registration:

Class 31: Canned foodstuffs consisting of meat for young animals

[29] For which I found there to be no similarity.

Class 39: Food Deliveries; Transport of food; Transportation of food; all the aforesaid relating to […], frozen French fries, […] and frozen chips; Refrigerated transport of food; Refrigerated transport of frozen goods; Storage of frozen food in warehouses; Frozen food storage services; all the aforesaid relating to french fries, frozen French fries, fried potatoes, potato chips, chips(potato-), potato fritters, potato snacks and frozen chips.

COSTS

77. The opponent has enjoyed a greater degree of success and is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 1/2023. Taking into consideration a small deduction to reflect the degree of success of the applicant, I award the opponent the sum of £325, calculated as follows:

Official fee	£100[30]
Preparing written submissions in lieu	£225
Total	**£325**

78. I therefore order SD FOODTECH LTD to pay RAJA MOHAMMED JAMAAL SIDDIQUE the sum of £325. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the final determination of the appeal proceedings.

Dated this 23rd day of March 2026

Sarah Wallace
For the Registrar

[30] Official Fees are not subject to a reduction in costs.