O/0366/26

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK APPLICATION NO. 4070238 BY FRITO-LAY TRADING COMPANY GMBH TO REGISTER THE TRADE MARK:

CRISPIN

IN CLASS 29

AND

OPPOSITION THERETO UNDER NO. 449055 BY LAURIERI SPA

BACKGROUND & PLEADINGS

1. Frito-Lay Trading Company GmbH ("the applicant") applied to register the trade mark ("the contested mark") shown on the front page of this decision in the United Kingdom. The application was filed on 1 July 2024 and was published on 12 July 2024 in respect of the following goods[1]:

> **Class 29:** Potato-based snack foods and chips; soy-based snack foods and chips; vegetable based snack foods and chips; nut-based snack foods and chips; ready to eat snack foods consisting primarily of potatoes and chips, nuts, nut products, seeds, vegetables or combinations thereof; including potato chips, potato crisps, vegetable chips, taro chips, crisps, pork snacks, beef snacks, soy-based snacks, legume-based snacks and spreads, dips, cheese; snack mixes.

2. On 12 August 2024, Laurieri Spa ("the opponent")[2] opposed the application on the basis of Section 5(2)(b) of the Trade Marks Act 1994 ("the Act")[3]. The opponent relies upon the following UK comparable mark[4]:

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[1] On 10 October 2024, the applicant filed Form TM21B deleting Class 30 from its specification. The Registry's letter dated 11 October 2024 asked the opponent to confirm whether the amendment to the specification of goods would allow the opposition to be withdrawn. The opponent did not respond, and the Registry with its letter dated 25 October 2024 considered the opposition was maintained.

[2] Further to correspondence from the Tribunal and the filing of Form TM16 filed on 2 March 2026, which recorded a transfer of ownership of the earlier mark from Lauriely Srl to Laurieri Spa, the necessary undertakings were filed on behalf of the latter on 17 March 2026. Laurieri Spa confirmed that i) has had sight of all relevant forms and evidence, ii) stands by the grounds of the pleadings, confirming that where the name of the previous opponent appears this should be read as though it is made in the name of Laurieri Spa, and iii) is aware of, and accepts liability for, costs.

[3] Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Act relied upon in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case-law of EU courts.

[4] 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

Trade Mark no.	UK00911838026
Trade Mark	CRESPINI
Goods for which the mark is registered	Class 30: Breadsticks.
Filing date	23 May 2013
Date of entry in register	17 January 2014

3. For the purposes of this opposition, the opponent relies on Class 30 goods as covered by its earlier mark.

4. The opponent claims that the competing marks are very similar. It also contends that the goods are identical and similar, and there exists a likelihood of confusion.

5. The applicant filed a defence and counterstatement denying the opponent's claims.

Papers filed and Representation

The opponent's evidence

6. Ms Yolanda Echevarria provided a statement of use proforma dated 18 November 2024 which is accompanied by nine exhibits (Exhibits 1-9). The main purpose of the evidence is to demonstrate that the earlier mark has been put to genuine use during the relevant period. Further, I note that the statement of use proforma also contains submissions; however, I do not consider it too onerous a task to separate the legal arguments/opinions of Ms Echevarria from her statements of fact. Therefore, I will adopt a pragmatic approach, treating the submissions as legal arguments and/or opinions rather than factual statements, even though they are nevertheless

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.

conveyed in a statement of use proforma accompanied by a statement of truth.

The applicant's evidence

7. The applicant's evidence consists of a witness statement dated 12 February 2025 from Ms Ana Marie Reid, a Partner at D Young & Co LLP (the legal representative of the applicant). Ms Reid's evidence is accompanied by 5 Exhibits (AMR1-5). The evidence focuses on the nature of the competing goods, including extracts from the UK Trade Mark Classes search results, and how they are marketed.

8. I have taken the above evidence into account in reaching my decision and will refer to the pertinent points below, where necessary.

9. The matter came to be heard by me via video conference on 4 March 2026. The applicant was represented by Mr David Ivison of Counsel, instructed by D Young & Co LLP. The opponent, who is represented by Marks & Us Lawyers Marcas y Patentes SLP, did not attend the hearing.

Preliminary Issue

10. In his skeleton argument, Mr Ivison raised an issue with Ms Echevarria's statement of use proforma, as the box "*holding the position of (position in company (if applicable))*" within the proforma was not completed. This matter was further discussed at the hearing. Mr Ivison claimed that Ms Echevarria, who also completed the Form TM7, appears to be acting as a legal representative for the opponent and does not have any personal knowledge of the activities of the company. However, he maintained that this should not be seen as a procedural irregularity requiring correction, but rather as indicative that the statement provided by Ms Echevarria should not carry any significant evidential weight. When I asked Mr Ivison to provide me with a specific example from the statement of use proforma that he believed had limited evidential value, he posited that, while the accompanying exhibits should not be disregarded, Ms Echevarria's

statement should not be relied upon to substantiate any issues arising from the accompanying exhibits.

11. Although I recognise that Ms Echevarria did not fill out the box regarding her position, in my view, this omission does not diminish the weight of what is included in the statement of use proforma. I consider that this box could reasonably be considered as optional for the individual completing the form, especially for someone who does not hold a position in the company. In any case, I do not find it appropriate to assign lesser weight to Ms Echevarria's statement of use proforma, given that the statement of use proforma itself is supported by a statement of truth which is dated and signed by her. As a result, I will consider the statement of use proforma in its entirety, along with the accompanying exhibits, and evaluate the evidence in accordance with its relevant evidential value.

DECISION

12. Section 5(2)(b) of the Act is as follows:

> "5(2) A trade mark shall not be registered if because-
>
> […]
>
> (b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,
>
> there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark".

13. By virtue of its earlier filing date, the trade mark upon which the opponent relies qualifies as an earlier trade mark pursuant to section 6 of the Act. As the earlier mark had completed its registration process more than 5 years before the application date of the mark in issue, it is subject to proof of use pursuant to section 6A of the Act. However, for reasons that will become apparent later in this decision, I do not consider that the issue of proof of

use will be determinative in these proceedings, and I will conduct my assessment on the basis that the opponent can rely upon the full breadth of its specification.

14. 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

15. 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."

16. 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."

17. 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."

18. 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 of 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."

19. The competing goods are as follows:

Earlier goods	Contested goods
Class 30: Breadsticks.	**Class 29:** Potato-based snack foods and chips; soy-based snack foods and chips; vegetable based snack foods and chips; nut-based snack foods and chips; ready to eat snack foods consisting primarily of potatoes and chips, nuts, nut products, seeds, vegetables or combinations thereof; including potato chips, potato crisps, vegetable chips, taro chips, crisps,

	pork snacks, beef snacks, soy-based snacks, legume-based snacks and spreads, dips, cheese; snack mixes.

20. Within his skeleton argument, Mr Ivison stated that the competing goods are dissimilar "*or at most only similar to a low degree*"[5]. At the hearing, Mr Ivison made lengthy submissions about the differences between the competing goods, which I have considered but I will not reproduce in full here.

21. The contested goods are largely snack foods, based on, for example, potatoes, vegetables, nuts, seeds, soy or legumes. Mr Ivison asserted that the earlier goods, "*breadsticks*", occupy a particular niche as classic accompaniments to an Italian meal rather than a snack. Therefore, he submitted that they serve a particular purpose, as opposed to crisps, for example, which can be eaten at lunch or between meals. The applicant has also adduced evidence (e.g. Exhibit AMR5), exhibiting the product packaging for breadsticks which is said to be associated with Mediterranean/Italian brand names and words, as opposed to crisps, which are said to denote a western and British heritage. Based on the evidence before me,[6] which concerns third party goods, I do not consider that it is safe for me to conclude that the broad term "*breadsticks*" will be understood by the consumers in the UK as inherently and exclusively associated with a Mediterranean accompaniment to a meal. Instead, it is my view that the earlier goods will be seen as baked products (made primarily from flour and yeast), which may be eaten as a savoury snack on their own or alongside meals. Thus, the competing goods will fulfil the

[5] Paragraph 13 of Mr Ivison's skeleton argument.

[6] I note that most of the printouts/screenshots are dated after the relevant date. However, I do not consider there to be any reason to think the position had changed significantly during that period, i.e. between the relevant date and the date of the evidence, and thus, I have taken them into account in my assessment.

same purpose, in that they are all ready-to-eat savoury food products intended for consumption for sustenance or enjoyment.

22. Further, the opponent claims that "flour and yeast" are essential to produce the competing goods.[7] In contrast, the applicant in its witness statement claimed that the competing goods are primarily made from different ingredients. In this regard, Exhibit AMR2 includes screenshots of various third party breadsticks and crisps, along with their respective lists of ingredients from online supermarkets, such as ASDA and Sainsbury's. Notably, "McCoy's Classic Multipack Crisps"[8] includes "rice flour" and "dried yeast extract" among the ingredients. In this context, I consider that there may be some limited overlap in the nature of the competing goods, even though they are made from different base ingredients (e.g. cereal vs potatoes or other vegetables).

23. They will also share the same users, namely members of the general public. Even though the competing goods may not be located next to each other in supermarkets (as shown in Exhibit AMR4), they will be distributed through the same trade channels, such as supermarkets and convenience stores. There is also an element of competition as the earlier goods may be selected as an alternative to the contested goods, or vice versa. However, there is no degree of complementarity between them. Overall, I find the competing goods to be similar to a low degree.

Average Consumer and the Purchasing Act

24. 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

[7] See Q8 in the opponent's statement of use proforma.

[8] See Exhibit AMR2 at pages 35-36.

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.

25. 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."

26. 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, as the average consumer is likely to consider dietary requirements, flavour and/or nutritional information.

Comparison of Trade Marks

27. 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."

28. 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.

29. The marks to be compared are:

Earlier Mark	Contested Mark
CRESPINI	CRISPIN

Overall Impression

30. The competing marks are word marks. Registration of a word mark protects the word itself.[9] I find that the overall impression of the marks resides in the word themselves.

Visual Comparison

31. The earlier mark is eight letters long and the contested is seven. Bearing in mind, as a rule of thumb, that the beginnings of marks tend to have more impact than the ends,[10] the competing marks share the same letters apart from those in position three and eight, i.e. "CRESPINI/CRISPIN". Considering all the factors, I find them to be visually similar to a high degree.

Aural Comparison

32. In the statement of use proforma, Ms Echevarria submitted that:

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

[10] See *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02, where the General Court observed that the attention of the consumer is usually directed to the beginning of a mark.

> "Aurally, consumers will not notice the difference between a trade mark "CRESPINI" and "CRISPIN". In the Opponent's earlier mark, the last letter "I" will be unpronounced in the UK market, and the letter "E" will be pronounced as "I", as in English."

33. In his skeleton argument, Mr Ivison stated that:

> "Aurally: the words are very different. By English speakers they will be pronounced: [fn omitted]
>
> (a) CRISP-IN; and
>
> (b) CRESS-PEEN-E."

34. In the absence of evidence, I disagree with Ms Echevarria's submissions. I consider that the average consumer in the UK will likely pronounce the earlier mark as "KRESS-PIN-EE" and the contested mark as "KRISS-PIN". In this regard, the earlier mark is three syllables long, whereas the contested mark is two. Although the first syllable in the competing marks will produce a similar sound, the second is identical. However, the marks diverge in the presence/absence of the third syllable ("-EE"). Taking into account the above factors, I consider that the marks are aurally similar to a high degree.

35. For completeness, I will consider the possibility that some consumers may verbalise the earlier mark as "KRESS-PEEN-EE". In this case, the articulation of the first two syllables between the competing marks will be similar, differing in the presence/absence of the third syllable ("-EE"). On this basis, I find that the marks are aurally similar to between a medium and high degree.

Conceptual Comparison

36. At the hearing, Mr Ivison submitted that the earlier mark will be perceived as an Italian name, with no inherent meaning for the UK average consumer. As to the contested mark, Mr Ivison contended that it will be

recognised as an old-fashioned English name. He also argued that there is an underlying conceptual meaning beyond the name, where the average consumer may understand there to be an allusion to the goods, i.e. crisps.

37. 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.

38. In the absence of evidence, I consider that the earlier mark, "CRESPINI", will be seen as an invented or a foreign word having no attributable meaning. However, I agree with Mr Ivison's submissions that the contested mark, "CRISPIN", will be understood as an old-fashioned English name or associated with the concept of 'crisp', alluding to the contested goods. Therefore, I find that the marks are conceptually dissimilar.

DISTINCTIVE CHARACTER OF THE EARLIER TRADE MARK

39. 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)."

40. 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. The distinctiveness of a mark can be enhanced by virtue of the use made of it.

41. As outlined in the previous section, the earlier word mark "CRESPINI" will be viewed as an invented/foreign word having no meaning. I find that the earlier mark has a high degree of inherent distinctive character with no allusive or suggestive characteristics.

Enhanced Distinctiveness

42. I should stress here that, whilst the mark is a comparable mark, it is the position in the UK that must be considered because the question is whether the average consumer in the UK will be confused. I am satisfied that the opponent has been trading under the CRESPINI brand. However, the total sum of the invoices provided (Exhibits 1-8) exceeds £109K, which does not strike me as significant in what must be a substantial market in the UK. The only exhibit, namely Exhibit 9, that the applicant adduced as evidence of advertising of the registered goods is undated, thereby having no evidential value. In addition, there is no indication of the UK turnover figures, the market share held by the mark, nor marketing expenditure figures as to the amount invested by the opponent in promoting the given

mark. I find the evidence is not sufficient to establish that the distinctiveness of the earlier mark has been enhanced through use in the UK.

LIKELIHOOD OF CONFUSION

43. 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.[11] 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 may be 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.[12]

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

45. In *The Picasso Estate v OHIM*, Case C-361/04 P, the Court of Justice of the European Union found that:

> "20. By stating in paragraph 56 of the judgment under appeal that, where the meaning of at least one of the two signs at issue is clear and specific so that it can be grasped immediately by the relevant public, the conceptual differences observed between those signs may

[11] See *Canon Kabushiki Kaisha*, paragraph 17.

[12] See *Lloyd Schuhfabrik Meyer*, paragraph 27.

counteract the visual and phonetic similarities between them, and by subsequently holding that that applies in the present case, the Court of First Instance did not in any way err in law."

46. In *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, Iain Purvis QC (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.[13]

47. In *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17, James Mellor QC (as he then was), 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.

48. Earlier in this decision I have concluded that:

- the goods at issue are similar to a low degree;
- the average consumer for the relevant goods will be a member of the general public, and the level of attention will be no more than medium. The selection process is predominantly visual without discounting aural considerations;
- the competing marks are visually similar to a high degree, aurally similar to a high degree (or to between a medium and high degree when the earlier mark is pronounced "KRESS-PEEN-EE") and conceptually dissimilar;
- the earlier mark is inherently distinctive to a high degree.

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

49. Taking into account my findings earlier in this decision, I find that there is no likelihood of direct confusion for similar goods. Notwithstanding the principle of imperfect recollection, I find that, when the marks are considered as a whole,[14] the average consumer would recall that one mark is the invented/foreign word "CRESPINI", and the other is "CRISPIN", which would be interpreted as an old-fashioned English name or associated with the concept of 'crisp'. This creates a strong conceptual dissimilarity between the marks, thereby counteracting the visual and aural similarities.[15] In this regard, and despite the high degree of inherent distinctiveness of the earlier mark, I consider that the average consumer, in this case, paying no more than a medium degree of attention during the purchasing process, is unlikely to mistake one mark for the other, on similar goods.

50. In terms of indirect confusion, I bear in mind that there should be a proper basis for a finding of a likelihood of indirect confusion.[16] Whilst the *L.A. Sugar* categories are not exhaustive, I see no reasonable basis on which the consumer would be induced to believe that the competing marks are variants or sub-brands of each other nor that the goods in question are from the same or economically linked undertakings. Even if the average consumer recalls the points of similarity between the marks, such as that they share the common letters "CR-SPIN-", I still consider the marks would not be indirectly confused. I keep in mind that, despite the shared letters, the average consumer will recall the marks as a whole. Thus, I consider that the guidance given in *Duebros* is appropriate in this case, namely that an average consumer may (at best) merely associate the common letters in the marks but would not confuse the two. I find that there is no likelihood of indirect confusion.

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[14] See *Kurt Geiger v A-List Corporate Limited*, BL O/075/13.

[15] See *Picasso* above.

[16] See *Liverpool Gin Distillery* above, at paragraph 16.

OUTCOME

51. The opposition has been unsuccessful. **There is no likelihood of confusion. The opposition on the basis of the claim under Section 5(2)(b) fails.** Therefore, subject to any successful appeal, the application can proceed to registration.

COSTS

52. The applicant has been successful and 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:

Considering the other side's statement and preparing a counterstatement	**£250**
Preparing evidence and considering and commenting on the other side's evidence	**£400**[17]
Preparing for and attending the hearing	**£900**
Total	**£1,550**

53. I, therefore, order Laurieri Spa to pay to Frito-Lay Trading Company GmbH the sum of £1,550. 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 29th day of April 2026

Dr Stylianos Alexandridis
For the Registrar,
The Comptroller General

[17] Reduced to reflect the relevance of the evidence.