O/0368/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00004170936
IN THE NAME OF
CLAUDIA SAMANTHA LEITAO DE MELO TEIXEIRA
TO REGISTER THE FOLLOWING TRADE MARK:

Mabel's Cakes

IN CLASSES 30 & 43

AND

IN THE MATTER OF OPPOSITION THERETO
UNDER NO. OP000454283
BY
CIPA INDUSTRIAL DE PRODUCTOS ALIMENTARES LTDA

Background and pleadings

1. On 09 March 2025, Claudia Samantha Leitao de Melo Teixeira ("the Applicant") applied to register the trade mark shown on the cover page of this decision in the UK. The application was accepted and published in the Trade Marks Journal on 28 March 2025 in respect of goods and services in classes 30 and 43 as set out in paragraph 19 of this decision.

2. On 20 May 2025, CIPA INDUSTRIAL DE PRODUCTOS ALIMENTARES LTDA ("the Opponent") opposed the application under Section 5(2)(b) of the Trade Marks Act 1994 ("the Act"). The opposition is directed against all goods and services in the application. The Opponent relies upon the following mark:

UK Registration no. UK00913589965 ("the Opponent's mark")
Filing date: 18 December 2014
Date of registration: 04 May 2015
Relying upon the goods in classes 29 and 30, as set out in paragraph 19 of this decision.

3. Under Article 54 of the Withdrawal Agreement between the UK and the EU, the UK IPO created comparable UK trade marks for all right holders with an existing registered EUTM or International Registration designating the EU. As a result, the Opponent's mark was converted into a comparable UK trade mark. Comparable UK marks are now recorded in the UK trade mark register, have the same legal status as if they had been applied for and registered under UK law, and the original filing dates remain the same.[1]

[1] See also Tribunal Practice Notice ("TPN") 2/2020 End of Transition Period – impact on tribunal proceedings.

4. By virtue of its earlier filing date, the above registration constitutes an earlier mark within the meaning of section 6 of the Act. As the earlier mark completed its registration process more than five years before the filing date of the application in issue, it is, in principle, subject to the use provisions contained in section 6A of the Act. However, the Applicant did not request the Opponent provide proof of use. The Opponent can, therefore, rely upon all of the goods it has identified without having to demonstrate use.

5. The Opponent submits that the goods and services at issue are identical or highly similar, and the marks are highly similar.

6. The Applicant filed a counterstatement within which it denied the claims made.

7. Neither party filed evidence during the proceedings. Neither party requested a hearing, however, the Opponent filed submissions in lieu. This decision is taken following a careful consideration of the papers.

8. The Applicant is not legally represented;[2] the Opponent is represented by Brand Murray Fuller LLP.

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.

Preliminary Issues

No actual confusion argument

[2] I note that the TM8 was filed by Camila Michkinis on behalf of the Applicant, however, they are not formally representing the Applicant in these proceedings.

13. The Applicant argues that there are numerous brands that contain the name 'Mabel' or similar variants and that coexist in the food and beverage sector making any likelihood of confusion unlikely. Although I acknowledge these comments, I note that the Applicant has not provided any evidence to support this argument. In any event, 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.[3] 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 for which it is registered, or in such a way that there has been no possibility of the one being mistaken for the other.[4]

Party argues that they operate in a different commercial sector

14. In its counterstatement the Applicant submits that "[…] *the Applicant operates under the brand "MABEL'S CAKES" in a complementary and distinct commercial space, focused on fresh, handmade cakes and services associated with their immediate provision and enjoyment*".[5] In this regard, I am required to make the assessment of the likelihood of confusion notionally and objectively based on the Opponent's goods, as registered, and the Applicants' goods and services, as applied for, in accordance with the relevant case law. That assessment requires 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.[6] This is because trade mark registrations are items of property which may be sold by the Applicants and/or Opponent to third parties in the future and may therefore be used in a different way, or upon/in relation to different goods, than those used by the current proprietors of those marks. In this connection, in *Devinlec Développement*

[3] *The European Limited v The Economist Newspaper Ltd* [1998] FSR 283.
[4] *Roger Maier and Another v ASOS,* [2015] EWCA Civ 220.
[5] Applicant's counterstatement at paragraph 5.2. The Applicant also restates at paragraph 6.2 that "*the marks operate in different commercial contexts*".
[6] *O2 Holdings Limited, O2 (UK) Limited v Hutchison 3G UK Limited*, Case C- 533/06, [66].

Innovation Leclerc SA v Office for Harmonization in the Internal Market (Trade Marks and Designs) ("OHIM"), Case C-171/06P, the Court of Justice of the European Union ("CJEU") stated:

> "59. As regards the fact that the particular circumstances in which the goods in question were marketed were not taken into account, the Court of First Instance was fully entitled to hold that, since these may vary in time and depending on the wishes of the proprietors of the opposing marks, it is inappropriate to take those circumstances into account in the prospective analysis of the likelihood of confusion between those marks."

15. As such, it is not appropriate to take that factor into account in my assessment. However, I will make an assessment, later in this decision, as to who the average consumer could be for the goods and services at issue.

DECISION

Section 5(2)

16. The opposition is based upon Section 5(2)(b) of the Act, which reads as follows:

> "5(2) A trade mark shall not be registered if because -
>
> (a) …
>
> (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".

17. Section 5A of the Act states as follows:

"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."

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:

(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. The goods and services for comparison are as follows:

Opponent's goods	**Applicant's goods and services**
Class 29: Preserved, dried and cooked vegetables; eggs; milk and milk products; edible oils and fats; potato-based snack foods and chips; soy-based snack foods and chips; fruit-based snack foods and chips; vegetable based snack foods and chips; other vegetable based food products included in this class; nut-based snack foods and chips; ready to eat snack foods consisting primarily of	Class 30: Food seasonings; Starch for food; Food flavourings; Honey [for food]; Glucose for food; Turmeric for food; Fructose for food; Flour for food; Mustard for food; Rice-based snack food; Snack food (Rice-based -); Cereal-based snack food; Snack food (Cereal-based -); Syrup for food; Oat-based food; Glutamate for food; Maltose for food; Molasses for food; Wafers [food]; Starch products for

potatoes and chips, nuts, nut products, seeds, fruits, vegetables or combinations thereof; including potato chips, potato crisps, fruit chips, vegetable chips, vegetable-based salads, taro chips, crisps, pork snacks, beef snacks, soy-based snacks, legume-based snacks and spreads, dips, cheese; snack mixes. <u>Class 30:</u> Coffee, tea, cocoa and artificial coffee; rice; tapioca and sago; confectionery; ices; yeast, baking-powder; salt; mustard; vinegar, sauces (condiments); spices; ice; ice cream; flour and preparations made from cereals; bread, bread rolls; buns; bread products; pastry and confectionery; croissants; cakes; ready to eat snack foods consisting primarily of grains, corn, cereal or combinations thereof, including corn chips, chilli, tortilla chips, tortillas, pita chips, rice chips, rice cakes, rice crackers, crackers, pretzels, waffles, puffed snacks, popcorn, popped popcorn, candied popcorn, candied peanuts, snack food dipping sauces, salsas, snack bars; rice based snack foods and chips; cereal-based snack foods and food bars; granola and granola-based snack foods; cookies;	food; Flavourings of almond for food or beverages. <u>Class 43:</u> Food and drink catering; Catering of food and drink; Catering (Food and drink -); Catering of food and drinks; Preparation of food and drink; Preparation of food and beverages; Provision of food and drink in restaurants; Fast food restaurants; Food preparation; Take-away food and drink services; Providing food and drink; Providing of food and drink; Takeaway food and drink services; Serving food and drinks; Providing food and beverages; Provision of food and beverages; Provision of food and drink; Hospitality services [food and drink];Decorating of food; Take-away food services; Food and drink catering for institutions; Providing food and drink in bistros; Services for the preparation of food and drink; Food and drink preparation services; Takeaway food services; Catering for the provision of food and drink; Food and drink catering for banquets; Providing food and drink for guests in restaurants; Take-away fast food services; Serving food and drink for guests in restaurants; Catering for the provision of food and beverages;

biscuits; flaked corn; chocolate, candy, caramels (candy); grain-based snack foods; corn-based snack foods and chips; flour based snack foods and chips; including bagel chips, pita chips, salsa.	Providing food and drink in doughnut shops.

20. In *Gérard Meric v OHIM,* Case T-133/05, the General Court ("GC") stated that:

> "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".

21. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account. In the judgment of the Court of Justice of the European Union ("CJEU") in *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc,* Case C-39/97, the court stated at paragraph 23 that:

> "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.

22. Guidance on this issue has come from Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, where he identified the factors for assessing similarity as:

    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.

23. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods and services. In *Boston Scientific Ltd v OHIM*, Case T-325/06, the GC stated that "complementary" means:

> "82. ...there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking".

24. For the purposes of considering the issue of similarity of the goods and services, it is permissible to consider groups of terms collectively where appropriate: *Separode Trade Mark*, BL O-399-10.

25. While making my comparison, I bear in mind the comments of Floyd J. (as he then was) in *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch):

> "12. … Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise. … Nevertheless the principle should not be taken too far. ... 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."

26. In the case of services, the terms used should not be interpreted widely, but confined to the core of the possible meanings attributable to the terms: *SkyKick UK Ltd & Anor v Sky Ltd & Ors* (*Rev1*) [2024] UKSC 36, at [365].

27. In its written submissions, the Opponent has referred to two prior decisions of the Registrar (Cases BL O/075/16 and O/0333/25). Whilst I note the contents and findings of those decisions, I am not bound by them and will proceed to conduct a full comparison, having regard to the relevant case law and all the relevant factors.

28. The Opponent submits that the Applicant does not dispute that the class 30 goods are identical or highly similar.[7] I acknowledge that the Applicant submits that 'some overlap exists within class 30',[8] however, they do not specify which goods they consider to be similar, or to what extent. In the absence of such clarification, I must proceed to make a full assessment on the similarity of the goods and services at issue.

29. In relation to class 43, the Applicant submits that the services 'differ substantially in nature, purpose, and distribution channels from pre-packaged food products'.[9] The Opponent, however, submits that their goods in classes 29 and 30 are not limited to pre-packaged products, and are 'inextricably linked' to the Applicant's class 43 services.[10]

[7] Opponent's written submissions of 23 July 2025, page 3.
[8] Applicant's TM8 and counterstatement, paragraph 3.1.
[9] Applicant's TM8 and counterstatement, paragraph 3.1.
[10] Opponent's written submissions of 23 July 2025, page 3.

30. On this point, I bear in mind the direction of *Sanco SA v OHIM*, Case T-249/11, where the GC indicated that goods and services may be regarded as 'complementary' and therefore similar to a degree in circumstances where the nature and purpose of the respective goods and services are very different, i.e. chicken against transport services for chickens. The purpose of examining whether there is a complementary relationship between goods/services is to assess whether the relevant public are liable to believe that responsibility for the goods/services lies with the same undertaking or with economically connected undertakings. As Mr Daniel Alexander Q.C. (as he then was) noted, as the Appointed Person, in *Sandra Amalia Mary Elliot v LRC Holdings Limited*, BL-0-255-13:

> "It may well be the case that wine glasses are almost always used with wine – and are, on any normal view, complementary in that sense – but it does not follow that wine and glassware are similar goods for trade mark purposes."

31. Whilst on the other hand:

> "… it is neither necessary nor sufficient for a finding of similarity that the goods in question must be used together or that they are sold together."

32. I bear in mind that there are several Registry decisions which have considered the similarity of prepared foods and ingredients to the provision of services in class 43.[11] I note the contents and findings of those decisions, however, I will proceed to conduct a full comparison of the goods and services at issue, giving due consideration to the above caselaw.

Class 30

Cereal-based snack food; Snack food (Cereal-based -).

[11] In respect of class 29, see the cases of *FLAMIN GRILL* (BL O/198/12), *PROVENANCE BRANDS* (BL O/198/14) and *SAINSBURY'S TOP DOG* (O/292/15 together with the appeal decision of Ms Emma Himsworth Q.C., sitting as the Appointed Person, under case number O/044/16). In respect of class 30, see the cases of *AOK* (BL O/409/22) and *COPPOLA* (BL O/106/19).

33. Although expressed slightly differently, the Applicant's above goods are self-evidently identical to the Opponent's "cereal-based snack foods and food bars".

Rice-based snack food; Snack food (Rice-based -).

34. Although expressed slightly differently, the Applicant's above goods are self-evidently identical to the Opponent's "rice based snack foods and chips".

Mustard for food.

35. I consider that the Applicant's above goods are encompassed by the Opponent's wider category "mustard". The goods are therefore identical on the principle outlined in *Meric.*

Flour for food.

36. I consider that the Applicant's above goods are encompassed by the Opponent's wider category "flour and preparations made from cereals". The goods are therefore identical on the principle outlined in *Meric.*

Turmeric for food.

37. Turmeric is a type of spice often added to food. I consider it to be encompassed by the Opponent's wider category "spices". The goods are therefore identical on the principle outlined in *Meric.*

Food flavourings; Food seasonings.

38. The Applicant's above goods are flavouring and seasonings, which are added to food to improve its flavour. I consider the Applicant's above wider categories encompass the Opponent's "spices". The goods are therefore identical on the principle outlined in *Meric.*

Wafers [food].

39. I consider wafers to be a type of biscuit and therefore consider the Applicant's above goods to be encompassed by the Opponent's wider category "biscuits". The goods are therefore identical on the principle outlined in *Meric.*

Oat-based food.

40. As oats are a type of cereal, I consider the Applicant's above goods to be encompassed by the Opponent's wider category "preparations made from cereals". The goods are therefore identical on the principle outlined in *Meric.*

Flavourings of almond for food or beverages.

41. The Applicant's above goods overlap in user with the Opponent's "spices". I consider there to be an overlap in purpose and method of use, as the goods at issue can all be added to food or beverages to improve their flavour. The nature of the goods may differ but can also overlap, as while spices are commonly in powder form and flavourings of almond are usually in liquid form, this is not always the case. Bearing in mind that spices will encompass those used for baking, I consider that the same undertaking may provide both spices and flavourings of almond and they will likely be sold within the same baking aisle of supermarkets. I do not consider the goods to be in competition, and although they may be used alongside one another, I do not consider them complementary in the way set out in caselaw. Overall, I consider the goods to be similar to a high degree.

Glucose for food; Honey [for food]; Syrup for food; Fructose for food; Maltose for food; Molasses for food.

42. The Applicant's above goods are all sugars and sugar-based ingredients for food. This overlaps in user and method of use with the Opponent's 'yeast, baking-powder' as they are all ingredients added to food when it is being prepared or cooked. I consider that the goods differ in nature and purpose, as yeast is used as a raising agent in bread and dough, while the Applicant's above goods are used to

add sweetness to food. While the goods at issue are all used in cooking, I consider that they may be provided in different forms, with yeast commonly in dried form, and the Applicant's goods usually provided in liquid or powder form, although I note that this is not always the case. The goods at issue are all commonly used in baking, and as such the average consumer is likely to expect they originate from the same undertaking. Further to this, the goods are likely to be sold within the same specialist baking retailers or within close proximity to one another within the baking aisle of supermarkets. I do not consider that the goods are in competition, as a consumer would not purchase a sweetening agent in place of yeast, and although they may be used alongside one another, I do not consider them to be complementary in the way set out in caselaw. Overall, I consider the goods to be similar to a medium degree.

Starch for food; Starch products for food.

43. The Applicant's above goods are starch and starch-based ingredients for food. I consider that there is an overlap in user and method of use with the Opponent's 'yeast, baking-powder' as they are all ingredients added to food when it is being prepared or cooked. The respective goods overlap in nature to the extent they are commonly supplied as dried or powdered food additives. I consider that the goods differ in purpose, as in the absence of any evidence to the contrary, I understand starch for food to be used in cooking as a thickener or binding agent, while yeast is used as a raising agent. As the goods at issue are all additives used in cooking, I consider that the average consumer is likely to expect them to originate from the same undertaking. Further to this, the goods are likely to be sold within the same specialist food retailers or within close proximity to one another in supermarkets. I do not consider that the goods are in competition, as a consumer would not purchase a thickening agent in place of a raising agent. Although they may be used alongside one another, I do not consider them to be complementary in the way set out in caselaw. Overall, I consider the goods to be similar to a medium degree.

Glutamate for food.

44. In the absence of any submissions from the parties, I understand glutamate to be a food additive used to enhance flavour. In view of this, I consider the Opponent's best case lies in "spices". I consider there to be an overlap in user, purpose and method of use, as the goods at issue are all added to food to improve its flavour. The goods overlap in nature to the extent they are both commonly supplied in dried or powder form, although this is not always the case. I consider that the same undertaking is likely to provide both spices and glutamate and that the goods are likely to be sold within the same aisle of supermarkets. While the goods at issue are both used to enhance the flavour of food, in the absence of any evidence on this point, I consider that the average consumer would not purchase glutamate in place of a spice. Although the goods may be used alongside one another, I do not consider them complementary in the way set out in caselaw. Overall, I consider the goods to be similar to a medium degree.

Class 43

Providing food and drink; Providing of food and drink; Providing food and beverages; Provision of food and beverages; Provision of food and drink; Serving food and drinks; Provision of food and drink in restaurants; Providing food and drink in bistros; Providing food and drink for guests in restaurants; Serving food and drink for guests in restaurants; Providing food and drink in doughnut shops; Fast food restaurants; Take-away food and drink services; Takeaway food and drink services; Take-away food services; Takeaway food services; Take-away fast food services; Hospitality services [food and drink].

45. The Applicant's above services are all concerned with the provision of food and drinks, in, inter alia, restaurants, bistros or take-aways. I consider that the Opponent's "bread products" and "coffee, tea, cocoa and artificial coffee" are not only important to the Applicant's services (with the Opponent's goods likely being used in the provision of those services), but the average consumer may perceive both the goods and services as coming from the same, or economically linked, undertakings. I say this as I consider it is not unusual for food and drink providers, such as cafés or bakeries, for example, to sell their own branded bread or coffee products. Therefore, the goods and services are complementary. The Applicant's

services clearly differ in nature and method of use to the Opponent's goods, however, they share the broad purpose of being consumed by the user.

46. There is an overlap in user and trade channels, as an establishment providing food or drinks may also sell food products or drinks for customers to purchase and consume at home. There is a degree of competition between the goods and services, in that a consumer may choose to purchase the Opponent's goods from the supermarket, for example, rather than engage services to provide food and/or drinks for them. Overall, I consider that the goods and services are similar to a medium degree. However, if I am wrong to find that the goods and services are complementary, I still consider that the goods and services are similar to a low degree.

Food and drink catering; Catering of food and drink; Catering (Food and drink -); Catering of food and drinks; Catering for the provision of food and drink; Catering for the provision of food and beverages; Food and drink catering for banquets; Food and drink catering for institutions.

47. The Applicant's above catering services are provided at the consumer's choice of location and provide food and beverages to larger groups of people. I consider there to be an overlap in user and broad purpose with the Opponent's "bread products" and "coffee, tea, cocoa and artificial coffee". As such goods are routinely provided as a core component of catered food/drinks, I consider they are important to the Applicant's services. In the absence of evidence from the parties, I do not consider that the goods and services at issue share the same trade channels. Nor do I consider that the average consumer would expect an undertaking providing catering to also sell bread products and/or coffee, tea, cocoa and artificial coffee for customers to purchase and consume at home, as such, they are not complementary. There is a degree of competition between the goods and services, in that a consumer seeking to provide refreshments at a meeting or event (for example) may choose to purchase bread products or coffee, for example, to prepare themselves in place of arranging for food to be provided by a caterer. Overall, I consider that the goods and services are similar to a low degree.

Preparation of food and drink; Preparation of food and beverages; Food preparation; Services for the preparation of food and drink; Food and drink preparation services.

48. The Applicant's above services are concerned with the preparation of food and beverages. In the absence of any submissions from the Opponent as to where their best case lies, I will proceed to carry out my comparison based on "bread products" and "coffee, tea, cocoa and artificial coffee". There is a degree of overlap in user at a very general level, however, I consider that the goods and services clearly differ in nature, purpose and method of use. I say this because bread products, coffee, tea, cocoa and artificial coffee are food and drink items which are consumed for sustenance or enjoyment, while the Applicant's above services are for the creation or preparation of food and drink. While the Opponent's goods are important to the Applicant's services, in the absence of any evidence, I do not consider that the average consumer would expect an undertaking providing preparation services to also be responsible for providing finished or ready to eat/drink products. In view of this, I do not consider the goods and services to be complementary. While some restaurants or supermarkets may sell bread products or coffee, for example, which are prepared on site, I do not consider this to be customary in trade. The goods and services are not in competition, as it is unlikely that a consumer would choose to engage the services of an undertaking providing food and drink preparation services in place of purchasing the goods to make food or drinks themselves. Overall, I consider the goods to be similar to a very low degree.

Decorating of food.

49. The Applicant's above service is a type of food preparation service concerned with the decoration of food. I consider that the Opponent's best case lies in "cakes" as these goods are often used as a base for decoration. While there is an overlap in user, I consider the goods and services differ in nature, purpose and method of use. I say this because food decoration services are primarily focused on producing foods which are aesthetically pleasing, while cakes themselves are for consumption. While the Opponent's goods may be used in the Applicant's services,

I do not consider that the average consumer would expect an undertaking that offers food decoration services to also provide finished food goods for consumption. While a cake decorator (for example) may also provide ready to eat cakes, I do not consider this to be customary in trade. In view of this, I do not consider the goods and services to be complementary. The goods and services are not in competition, as I consider it unlikely that a consumer would choose to engage the services of an undertaking offering food decoration services in place of purchasing a ready to eat cake to consume. Overall, I consider the goods to be similar to a low degree.

Average consumer and the purchasing act

50. As the case law above indicates, it is necessary to determine who the average consumer is for the goods and services at issue. I must then determine the manner in which the goods and services are likely to be selected by the average consumer.

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

52. 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.

53. I consider that the average consumer for the goods and services at issue will be members of the general public or businesses concerned with the manufacture or provision of food.

54. Where the average consumer is the general public, the goods at issue will be self-selected from supermarkets (or their online equivalents), or via food/drink establishments such as take-aways and restaurants. In food/drink establishments, the goods are likely to be selected aurally, however, this will take place after the goods have been viewed visually in display cabinets or on menus. Where the average consumer is a business, the goods will be self-selected from wholesalers of foodstuffs (or their online equivalents), or via brochures.

55. I consider that the services at issue, for both sets of average consumers, will likely be selected after the consumer has viewed websites, promotional materials or signage on physical premises.

56. In view of the above, I consider that the selection process for both the goods and the services at issue will be primarily visual for both sets of average consumers, however, the consumer may also seek reviews or recommendations about the goods/services at issue, where verbal factors would come into play.

57. The frequency of purchase and costs will vary according to the exact nature of the goods/service at issue, from goods such as rice-based snack food which will be low-cost and frequently purchased, to services such as the decoration of food which will be higher cost and less frequently engaged. Various factors are likely to be taken into consideration during the purchasing process of the goods, including the cost, flavour, ingredients and nutritional content. For the services, the consumer will consider factors such as the range of food/drink on offer, dietary requirements and hygiene ratings. Overall, I consider that where the average consumer is the general public, they will pay a medium degree of attention. Where the average consumer is a business, they will pay a slightly higher degree of attention during the purchasing process due to the impact that poor quality goods and services could have on the reputation of their business. However, I bear in mind that the likelihood of confusion must be assessed from the perspective of the former (the general public) since they are the group who will pay the lower degree of attention.[12]

Comparison of the marks

58. The respective trade marks are shown below:

Opponent's trade mark	**Applicant's trade mark**

[12] Case T-356/14, *CareAbout v OHMI* - Florido Rodríguez (Kerashot), paragraph 25.

	**Mabel's Cakes**

59. The Applicant's mark consists of the words, 'Mabel's Cakes', absent of any stylisation or embellishments. The Opponent submits that the word 'cakes' within the Applicant's mark is devoid of distinctive character for cakes, ingredients for cakes and services for selling food including cakes.[13] The Applicant submits that 'while cakes is descriptive for goods in Class 30, the combination with the possessive "MABEL'S" creates a brand that is distinctive and evocative, especially within the context of small-scale bakery services and bespoke food offerings'.[14] In the absence of any evidence, I do not consider that the words "Mabel's Cakes", when placed together, form a distinctive unit. Instead, I consider that the average consumer will see the word "cakes" as descriptive or allusive to a wide range of food produce and food related services. In view of this, I consider that the word "Mabel's" plays and independent distinctive role, which dominates the overall impression of the mark, with "cakes" playing a lesser role.

60. The Opponent's mark consists of the word 'mabel' presented in a red stylised font. The letters overlap, with each individual letter outlined in white and the whole word further outlined in red. I consider that the word 'mabel' plays the greatest role in the overall impression of the mark, with the stylisation playing a lesser role.

61. Visually, the marks coincide in the presence of the word 'Mabel', albeit the Applicant's mark contains a possessive apostrophe and final letter 's'. A point of difference is the word 'cakes' at the end of the Applicant's mark. A further point of difference is the colour and stylisation of the Opponent's mark. Overall, I consider that the marks are visually similar to a medium degree.

[13] Opponent's TM7, question 9.
[14] Applicant's TM8 and counterstatement, paragraph 2.1.

62. Aurally, the Opponent's mark 'mabel' is reproduced in its entirety at the start of the Applicant's mark, to which the average consumer tends to pay more attention.[15] This element will be pronounced identically in both marks, however, the second syllable in the Applicant's mark ends with a 's', which acts as a point of aural difference. Another point of aural difference is the additional word 'cakes' at the end of the Applicant's mark, which will be pronounced in the ordinary way. Overall, I consider the marks to be aurally similar to a medium degree.

63. Conceptually, the Applicant submits that "MABEL'S CAKES" suggests a specific business or person offering freshly made cakes, which is materially different from the abstract and generic nature of the name "MABEL" in isolation".[16] The Opponent submits that "MABEL […] is a relatively unusual name in the United Kingdom".[17] In view of this, the parties seem to agree at least insofar as that MABEL is a name. I agree; I consider that a significant proportion of UK average consumers will recognise the word Mabel/Mabel's in both marks as a common female forename.

64. The word 'cakes' will be assigned its ordinary dictionary meaning. Therefore, the applied for mark will be understood as conveying the meaning of cakes belonging to or being produced by an individual named Mabel.

65. In relation to the name 'Mabel', I remind myself that Philip Harris, sitting as the Appointed Person in *Georgine Ratelband v Walmart Apollo, LLC* (BL O/1212/23) considered the question of the conceptual comparability of names. He held that conceptual comparison between names is perfectly possible, even where the names do not give rise to a concept over and above that of their being recognised as names. As such, the marks share this concept but differ in the concept of the word 'cakes'.

66. Overall, taking the above into account, I consider the marks to be conceptually similar to at least a medium degree.

[15] *El Corte Inglés, SA v OHIM,* Cases T-183/02 and T-184/02
[16] Applicant's TM8 and counterstatement, paragraph 1.3.
[17] Opponent's written submissions of 23 July 2025, page 2.

Distinctive character of the earlier trade mark

67. The distinctive character of a trade mark can be appraised only, first, by reference to the goods in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public – *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91. In *Lloyd Schuhfabrik*, the CJEU stated that:

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

68. Registered trade marks possess varying degrees of inherent distinctive character, being lower where they are suggestive or allusive of 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 that has been made of it.

69. In its counterstatement, the Applicant acknowledges that the Opponent's mark has existed in the UK market for a number of years and 'expresses full respect for its

established presence'.[18] The Opponent submits that this acknowledgment of established use of the mark adds to its distinctiveness,[19] however, as the Opponent has not filed any evidence to show that the distinctiveness of its earlier mark has been enhanced through use, I only have the inherent position to consider.

70. The Opponent's mark is comprised of the word 'mabel', which will be recognised by a significant proportion of UK average consumers as a female forename. The Applicant submits that in view of 'Mabel' being a relatively common name, its inherent distinctiveness is limited,[20] however, in the absence of any evidence on this point, I do not consider that the word 'mabel' has any descriptive or allusive meaning in relation to the goods for which the mark is registered.

71. In view of the above, I consider the Opponent's mark to be inherently distinctive to a medium degree.

Likelihood of confusion

72. I must now feed all of my earlier findings into the global assessment of the likelihood of confusion, keeping in mind the following factors: i) the interdependency principle, whereby a lesser degree of similarity between the goods or services may be offset by a greater similarity between the marks, and vice versa (*Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*); ii) the principle that the more distinctive the earlier mark is, the greater the likelihood of confusion (*Sabel BV v Puma AG*), and; iii) the factor of imperfect recollection i.e. that consumers rarely have the opportunity to compare marks side by side but must rather rely on the imperfect picture that they have kept in their mind (*Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V*).

73. There are two types of confusion that may occur. Direct confusion is where the average consumer mistakes one mark for the other, while indirect confusion is where the average consumer recognises that the marks are different, but for some

[18] Applicant's TM8 & counterstatement, paragraph 5.
[19] Opponent's written submissions page 2.
[20] Applicant's TM8 & counterstatement, paragraph 6.

reason assumes that the later mark also identifies the goods or services of the owner of the earlier mark, or that the two undertakings are related: see *L.A. Sugar Limited v Back Beat Inc*, BL O/375/10, paragraph 16.

74. The following factors must be considered to determine if a likelihood of confusion can be established:

- I have found the Applicant's mark and the Opponent's mark to be visually similar to a medium degree.
- I have found the Applicant's mark and the Opponent's mark to be aurally similar to a medium degree.
- I have found the Applicant's mark and the Opponent's mark to be conceptually similar to at least a medium degree.
- I have found the earlier mark to be inherently distinctive to a medium degree.
- I have identified the average consumer to be the general public and businesses concerned with the manufacture or provision of food. I have found that the average consumer will select the goods and services primarily by visual means, although I do not discount an aural component.
- I have concluded that the average consumer (bearing in mind that the likelihood of confusion must be assessed from the perspective of the group who will pay the lower degree of attention) will pay a medium degree of attention during the purchasing process.
- I have found the parties' goods and services to be between identical and similar to a very low degree.

75. Taking all of the above into account, given that the average consumer rarely has the opportunity to compare marks side-by-side and will instead encounter them in different settings at different times will, to my mind, lead the average consumer to mistake one mark for the other, even for those who are paying between a medium degree of attention during the purchasing process. This is on the basis that the word 'mabel' is fully encompassed at the beginning of the Applicant's mark, which, as noted above, the average consumer tends to pay more attention to. I consider that the average consumer would easily overlook or imperfectly recall the

stylisation in the Opponent's mark. I also consider that the average consumer could easily overlook the word 'cakes' at the end of the Applicant's mark where it is allusive or descriptive of the goods/services at issue. While this is especially the case where 'cakes' is descriptive of goods and services which relate to cakes, I consider it is allusive to a broad range of the Applicant's goods and services. I consider that there is a likelihood of direct confusion for the goods and services which are similar to at least a very low degree, due to the effect of the interdependency principle.

76. That leaves indirect confusion to be considered. In *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, Mr 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)."

77. 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.[21]

78. Furthermore, in *Liverpool Gin*,[22] 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.

79. If I am wrong in my finding at paragraph 75, and the average consumer does notice the differences in the marks, I consider they will likely attribute trade mark significance to the shared word element "Mabel", which creates a conceptual hook between the competing marks. In reaching this view, I bear in mind that I found the word 'Mabel' to play a greater role in the overall impression of each of the

[21] *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17
[22] *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207

respective marks. I consider that the absence of stylisation in the Applicant's mark would be seen as a difference of presentation rather than a difference of trade origin. In my view, the word "cakes" in the Applicant's mark will be seen as the addition of a non-distinctive element referring (i.e., the possessive "'s") to the earlier mark. Bearing in mind the comments of Arnold LJ in the preceding paragraph, I find that there is a likelihood of indirect confusion between the marks at issue for all goods, due to the effect of the interdependency principle.

CONCLUSION

80. The opposition based upon 5(2)(b) has been successful. Subject to any successful appeal against my decision, the application will be refused in its entirety.

COSTS

81. The Opponent has been successful and is entitled to a contribution towards its costs. I base the costs awarded on the scale contained in TPN 1/2023. In the circumstances, I award the Opponent the sum of £700 as a contribution towards the costs of the proceedings. The sum is calculated as follows:

Official fee	£100
Preparing a statement and considering the other side's statement	£250
Preparing written submission in lieu of a hearing	£350
Total:	**£700**

82. I therefore order Claudia Samantha Leitao de Melo Teixeira to pay CIPA INDUSTRIAL DE PRODUCTOS ALIMENTARES LTDA the sum of £700. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 29th day of April 2026

Emma Rees

For the Registrar