

**O/0374/26**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO. 4056326  
IN THE NAME OF ELYSEE EXPORT SAS  
TO REGISTER THE FOLLOWING TRADE MARK:**

**ELYSEE**

**IN CLASSES 29, 30, 32, 33, AND 35**

**AND**

**IN THE MATTER OF OPPOSITION THERETO  
UNDER NO. 600003525  
BY FREIXENET S.A.**

## BACKGROUND AND PLEADINGS

1. Elysee Export SAS (“the applicant”) applied to register the trade mark **ELYSEE** (“the applicant’s mark”) in the UK on 27 May 2024, under number 4056326. It was accepted and published in the Trade Marks Journal on 4 October 2024 in respect of a large range of goods and services in classes 29, 30, 32, 33, and 35 listed in Annex A at the end of this decision.

2. On 19 December 2024, Freixenet S.A. (“the opponent”) opposed the application by way of the fast-track procedure. The opposition is brought under section 5(2)(b) of the Trade Marks Act 1994 (“the Act”) and is directed against the following goods and services of the application:

Class 32: Beers; lagers; stouts; ales; kvass; porters; malt beers; imitation beers; wheat beers; flavoured beers; root beers; black beers; beer worts; ginger ales; ginger beers; dry ginger ales; flavoured beers; beers for use as dieting or slimming aids; beer-based beverages; coffee-flavoured beers; low alcohol beers; beer-based cocktails; beers enriched with minerals; beers containing fruit and/or vegetable juices and/or milk; processed hops for use in making beers; beer and brewery products; hop extracts for manufacturing beer; beverages; non-alcoholic beverages; non-alcoholic beers; de-alcoholised beers; non-alcoholic beer flavoured beverages; non-alcoholic gin flavoured drinks, whether flavoured with extracts of gin, botanicals or gin flavourings; soft drinks; vegetable drinks; energy drinks; cola drinks; isotonic drinks; dealcoholised drinks; energy drinks containing caffeine; low-calorie soft drinks; nonalcoholic drinks; carbonated non-alcoholic drinks; sports drinks containing electrolytes; isotonic non-alcoholic drinks; beverages containing vitamins; alcoholfree beverages; tonic water; effervescing beverages; non-alcoholic beverages with tea flavour; non-alcoholic kvass; soya-based beverages, other than milk substitutes; honey-based beverages; tomato juice beverages; mineral water; mineral and aerated waters; fruit beverages and fruit juices; fruit juices; smoothies; fruit-based beverages; frozen fruit beverages; fruit squashes; fruit nectars; non-alcoholic fruit nectars; non-alcoholic fruit extracts; frozen fruit drinks; mixed fruit juice; nonalcoholic fruit drinks; fruit flavoured soft drinks; syrups for making fruit-flavoured drinks; concentrates for making fruit juices; ice

fruit beverages; part-frozen slush drinks; fruit-flavoured carbonated drinks; non-alcoholic aloe vera drinks; sorbets [beverages]; sherbets [beverages]; squashes; red ginseng juice beverages; smoked plum beverages; pineapple juice beverages; grape juice beverages; orange juice beverages; apple juice beverages; syrups and other non-alcoholic preparations for making beverages; syrups for making soft drinks; malt wort; non-alcoholic beverages containing malt ; malt and malt extracts for making beverages. malt syrup for beverages; powders used in the preparation of fruit-based beverages; pastilles for effervescing beverages; powders for effervescing beverages; preparations for making beverages.

Class 33: Alcoholic beverages, except beers; spirits; distilled spirits; liqueurs; alcoholic carbonated beverages, except beer; ciders; sweet or hard cider; alcoholic fruit beverages; alcoholic energy drinks; alcoholic egg nog; edible alcoholic beverages; low alcoholic drinks; alcoholic cocktails containing milk; alcoholic tea-based beverage; alcoholic fruit cocktail drinks; alcoholic coffee-based beverage; alcoholic beverages except beers; pre-mixed alcoholic beverages; alcoholic cocktails in the form of chilled gelatines; wines; low-alcoholic wine; red wines; rose wines; prepared wine cocktails; natural sparkling wines; mulled wines; white wines; rums; spiced rum; white rum; aged rum; dark rum; vodkas; vodka mixtures; mixed alcoholic drinks containing vodka; alcoholic beverages containing vodka; whiskeys; malt whisky; gin; flavoured gin; gin-based beverages; fruit-infused gins; cucumber-infused gin; sloe gin; grappas; tequilas; ports; kirshes; arracks; brandies; calvados; cachaças; alcopops; araks; aperitifs; anisette; sakes; sangrias; sherries; schnapps; vermouths; rice alcohols; brandies; scotch; bourbons; prepared alcoholic cocktails; alcoholic preparations for making beverages; alcoholic essences; alcoholic cordials; alcoholic punches; alcoholic bitters; alcoholic jellies; alcoholic extracts; prepared alcoholic cocktails; alcoholic fruit extracts; alcoholic cocktail mixes; alcoholic aperitif bitters; alcoholic cordials containing vodka; alcoholic extracts containing vodka; alcoholic bitters containing vodka.

Class 35: Electronic and online shopping retail services in relation to drink products; online and offline retail, wholesale, import and export services relating

to the sale of , beers, lagers, stouts, ales, kvass, porters, malt beers, imitation beers, wheat beers, flavoured beers, root beers, black beers, beer worts, ginger ales, ginger beers, dry ginger ales, flavoured beers, beers for use as dieting or slimming aids, beer-based beverages, coffee-flavoured beers, low alcohol beers, beer-based cocktails, beers enriched with minerals, beers containing fruit and/or vegetable juices and/or milk, processed hops for use in making beers, beer and brewery products, hop extracts for manufacturing beer, beverages, non-alcoholic beverages, non-alcoholic beers, de-alcoholised beers, non-alcoholic beer flavoured beverages, non-alcoholic gin flavoured drinks, whether flavoured with extracts of gin, botanicals or gin flavourings, soft drinks, vegetable drinks, energy drinks, cola drinks, isotonic drinks, dealcoholised drinks, energy drinks containing caffeine, low-calorie soft drinks, nonalcoholic drinks, carbonated non-alcoholic drinks, sports drinks containing electrolytes, isotonic non-alcoholic drinks, beverages containing vitamins, alcoholfree beverages, tonic water, effervescing beverages, non-alcoholic beverages with tea flavour, non-alcoholic kvass, soya-based beverages, other than milk substitutes, honey-based beverages, tomato juice beverages, mineral water, mineral and aerated waters, fruit beverages and fruit juices, fruit juices, smoothies, fruit-based beverages, frozen fruit beverages, fruit squashes, fruit nectars, non-alcoholic fruit nectars, nonalcoholic fruit extracts, frozen fruit drinks, mixed fruit juice, non-alcoholic fruit drinks, fruit flavoured soft drinks, syrups for making fruit-flavoured drinks, concentrates for making fruit juices, ice fruit beverages, part-frozen slush drinks, fruit-flavoured carbonated drinks, non-alcoholic aloe vera drinks, sorbets [beverages], sherbets [beverages], squashes, red ginseng juice beverages, smoked plum beverages, pineapple juice beverages, grape juice beverages, orange juice beverages, apple juice beverages, syrups and other non-alcoholic preparations for making beverages, syrups for making soft drinks, malt wort, non-alcoholic beverages containing malt , malt and malt extracts for making beverages. malt syrup for beverages, powders used in the preparation of fruit-based beverages, pastilles for effervescing beverages, powders for effervescing beverages, preparations for making beverages, alcoholic beverages, except beers, spirits, distilled spirits, liqueurs, alcoholic carbonated beverages, except beer, ciders, sweet or hard cider, alcoholic fruit beverages, alcoholic energy drinks, alcoholic egg nog,

edible alcoholic beverages, low alcoholic drinks, alcoholic cocktails containing milk, alcoholic tea-based beverage, alcoholic fruit cocktail drinks, alcoholic coffee-based beverage, alcoholic beverages except beers, pre-mixed alcoholic beverages, alcoholic cocktails in the form of chilled gelatines, wines, low-alcoholic wine, red wines, rose wines, prepared wine cocktails, natural sparkling wines, mulled wines, white wines, rums, spiced rum, white rum, aged rum, dark rum, vodkas, vodka mixtures, mixed alcoholic drinks containing vodka, alcoholic beverages containing vodka, whiskeys, malt whisky, gin, flavoured gin, gin-based beverages, fruit-infused gins, cucumber-infused gin, sloe gin, grappas, tequilas, ports, kirsches, arracks, brandies, calvados, cachaças, alcopops, araks, aperitifs, anisette, sakes, sangrias, sherries, schnapps, vermouths, rice alcohols, brandies, scotch, bourbons, prepared alcoholic cocktails, alcoholic preparations for making beverages, alcoholic essences, alcoholic cordials, alcoholic punches, alcoholic bitters, alcoholic jellies, alcoholic extracts, prepared alcoholic cocktails, alcoholic fruit extracts, alcoholic cocktail mixes, alcoholic aperitif bitters, alcoholic cordials containing vodka, alcoholic extracts containing vodka, alcoholic bitters containing vodka.

3. The opponent relies upon the following international registrations designating the UK and the following goods for which they are registered:

(i) **FREIXENET ELYSSIA**

International registration no. 1649357

International registration date and date of UK designation: 4 February 2022

Priority date: 3 February 2022

Date of protection in the UK: 2 June 2022

Goods relied on:

Class 33: Alcoholic beverages (with the exception of beers).

("the word IR")

(ii)



International registration no. 1668372

International registration date and date of UK designation: 27 April 2022

Priority date: 27 April 2022

Date of protection in the UK: 16 September 2022

Goods relied on:

Class 33: Alcoholic beverages (with the exception of beers).

("the figurative IR")

4. As the filing dates of the opponent's IRs are earlier than the filing date of the applicant's mark, the opponent's IRs constitute earlier marks in accordance with section 6 of the Act. However, as they had not been registered for five years or more at the filing date of the application, they are not subject to the proof of use requirements specified within section 6A of the Act. As a consequence, the opponent may rely upon all of the goods identified without having to establish genuine use.

5. In its statement of grounds, the opponent contends that the applicant's mark is highly similar to the opponent's IRs. It also argues that the parties' goods in class 33 are identical, and the applicant's goods in class 32 and services in class 35 are highly similar to the opponent's class 33 goods. On this basis, it argues that there exists a likelihood of confusion, including a likelihood of association.

6. The applicant filed a counterstatement denying the ground of opposition.

7. Rule 6 of the Trade Marks (Fast Track Opposition) (Amendment) Rules 2013, S.I. 2013 2235, disapplies paragraphs 1 to 3 of rule 20 of the Trade Mark Rules 2008 but provides that rule 20(4) shall continue to apply. Rule 20(4) stipulates that "the Registrar may, at any time, give leave to either party to file evidence upon such terms as the Registrar thinks fit". The net effect of these changes is to require the parties to seek leave in order to file evidence in fast-track oppositions. No leave was sought in respect of these proceedings.

8. The opponent is professionally represented by Forrester IP LLP and the applicant is professionally represented by Trade Mark Wizards Limited.

9. Rule 62(5) (as amended) states that arguments in fast-track proceedings shall be heard only if (i) the Office requests it, or (ii) either party to the proceedings requests it and the Registrar considers that oral proceedings are necessary to deal with the case justly and at proportionate cost; otherwise, written arguments will be taken. A hearing was neither requested nor considered necessary. Only the opponent filed written submissions. This decision is taken following a careful perusal of the papers, keeping all submissions in mind.

### **Relevance of EU law**

10. 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.

## Section 5(2)(b)

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

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

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark”.

12. Section 5A states: [...] “Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only.”

13. 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 Pairs Europe Inc & Anor*<sup>1</sup>:

- (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

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<sup>1</sup> [2025] UKSC 25

when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

- (e) nevertheless, the overall impression conveyed to the public by a composite trade mark may, in certain circumstances, be dominated by one or more of its components;
- (f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;
- (g) a lesser degree of similarity between the goods or services may be offset by a greater degree of similarity between the marks, and vice versa;
- (h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;
- (i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;
- (j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense; and
- (k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically linked undertakings, there is a likelihood of confusion.

### **Comparison of goods and services**

14. In *Canon*<sup>2</sup>, the Court of Justice of the European Union (“CJEU”) stated, at paragraph 23 of its judgment, that when considering whether goods and services are

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<sup>2</sup> Case C-39/97

similar, all the relevant factors relating to the goods and services should be taken into account. The CJEU stated that those factors include their nature, intended purpose, method of use and whether they are in competition with each other or are complementary.

15. The relevant factors identified by Jacob J. (as he then was) in *Treat*<sup>3</sup> for assessing similarity were:

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

16. In *Kurt Hesse v OHIM*<sup>4</sup>, 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 Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*<sup>5</sup>, the General Court (“GC”) stated that “complementary” means:

“...there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers

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<sup>3</sup> [1996] R.P.C. 281

<sup>4</sup> Case C-50/15 P

<sup>5</sup> Case T-325/06

may think that the responsibility for those goods lies with the same undertaking.”

17. In *Gérard Meric v OHIM*<sup>6</sup>, the GC confirmed that even if goods and services are not worded identically, they can still be considered identical if one term falls within the scope of another (or vice versa):

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

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

<b>The opponent’s goods</b>	<b>The applicant’s goods and services</b>
<p><u>Class 33</u>: Alcoholic beverages (with the exception of beers).</p>	<p><u>Class 32</u>: Beers; lagers; stouts; ales; kvass; porters; malt beers; imitation beers; wheat beers; flavoured beers; root beers; black beers; beer worts; ginger ales; ginger beers; dry ginger ales; flavoured beers; beers for use as dieting or slimming aids; beer-based beverages; coffee-flavoured beers; low alcohol beers; beer-based cocktails; beers enriched with minerals; beers containing fruit and/or vegetable juices and/or milk; processed hops for use in making beers; beer and brewery products; hop extracts for manufacturing beer; beverages; non-alcoholic beverages; non-alcoholic beers; de-</p>

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<sup>6</sup> Case T-33/05

	<p>alcoholised beers; non-alcoholic beer flavoured beverages; non-alcoholic gin flavoured drinks, whether flavoured with extracts of gin, botanicals or gin flavourings; soft drinks; vegetable drinks; energy drinks; cola drinks; isotonic drinks; dealcoholised drinks; energy drinks containing caffeine; low-calorie soft drinks; nonalcoholic drinks; carbonated non-alcoholic drinks; sports drinks containing electrolytes; isotonic non-alcoholic drinks; beverages containing vitamins; alcoholfree beverages; tonic water; effervescing beverages; non-alcoholic beverages with tea flavour; non-alcoholic kvass; soya-based beverages, other than milk substitutes; honey-based beverages; tomato juice beverages; mineral water; mineral and aerated waters; fruit beverages and fruit juices; fruit juices; smoothies; fruit-based beverages; frozen fruit beverages; fruit squashes; fruit nectars; non-alcoholic fruit nectars; non-alcoholic fruit extracts; frozen fruit drinks; mixed fruit juice; nonalcoholic fruit drinks; fruit flavoured soft drinks; syrups for making fruit-flavoured drinks; concentrates for making fruit juices; ice fruit beverages; part-frozen slush drinks; fruit-flavoured carbonated drinks; non-alcoholic aloe vera drinks; sorbets [beverages]; sherbets [beverages];</p>
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squashes; red ginseng juice beverages; smoked plum beverages; pineapple juice beverages; grape juice beverages; orange juice beverages; apple juice beverages; syrups and other non-alcoholic preparations for making beverages; syrups for making soft drinks; malt wort; non-alcoholic beverages containing malt ; malt and malt extracts for making beverages. malt syrup for beverages; powders used in the preparation of fruit-based beverages; pastilles for effervescing beverages; powders for effervescing beverages; preparations for making beverages.

Class 33: Alcoholic beverages, except beers; spirits; distilled spirits; liqueurs; alcoholic carbonated beverages, except beer; ciders; sweet or hard cider; alcoholic fruit beverages; alcoholic energy drinks; alcoholic egg nog; edible alcoholic beverages; low alcoholic drinks; alcoholic cocktails containing milk; alcoholic tea-based beverage; alcoholic fruit cocktail drinks; alcoholic coffee-based beverage; alcoholic beverages except beers; pre-mixed alcoholic beverages; alcoholic cocktails in the form of chilled gelatines; wines; low-alcoholic wine; red wines; rose wines; prepared wine cocktails; natural sparkling wines; mulled wines; white wines; rums; spiced rum; white rum;

aged rum; dark rum; vodkas; vodka mixtures; mixed alcoholic drinks containing vodka; alcoholic beverages containing vodka; whiskeys; malt whisky; gin; flavoured gin; gin-based beverages; fruit-infused gins; cucumber-infused gin; sloe gin; grappas; tequilas; ports; kirsches; arracks; brandies; calvados; cachaças; alcopops; araks; aperitifs; anisette; sakes; sangrias; sherries; schnapps; vermouths; rice alcohols; brandies; scotch; bourbons; prepared alcoholic cocktails; alcoholic preparations for making beverages; alcoholic essences; alcoholic cordials; alcoholic punches; alcoholic bitters; alcoholic jellies; alcoholic extracts; prepared alcoholic cocktails; alcoholic fruit extracts; alcoholic cocktail mixes; alcoholic aperitif bitters; alcoholic cordials containing vodka; alcoholic extracts containing vodka; alcoholic bitters containing vodka.

Class 35: Electronic and online shopping retail services in relation to drink products; online and offline retail, wholesale, import and export services relating to the sale of , beers, lagers, stouts, ales, kvass, porters, malt beers, imitation beers, wheat beers, flavoured beers, root beers, black beers, beer worts, ginger ales, ginger beers, dry ginger ales, flavoured beers, beers for

	<p>use as dieting or slimming aids, beer-based beverages, coffee-flavoured beers, low alcohol beers, beer-based cocktails, beers enriched with minerals, beers containing fruit and/or vegetable juices and/or milk, processed hops for use in making beers, beer and brewery products, hop extracts for manufacturing beer, beverages, non-alcoholic beverages, non-alcoholic beers, dealcoholised beers, non-alcoholic beer flavoured beverages, non-alcoholic gin flavoured drinks, whether flavoured with extracts of gin, botanicals or gin flavourings, soft drinks, vegetable drinks, energy drinks, cola drinks, isotonic drinks, dealcoholised drinks, energy drinks containing caffeine, low-calorie soft drinks, nonalcoholic drinks, carbonated non-alcoholic drinks, sports drinks containing electrolytes, isotonic non-alcoholic drinks, beverages containing vitamins, alcoholfree beverages, tonic water, effervescing beverages, non-alcoholic beverages with tea flavour, non-alcoholic kvass, soya-based beverages, other than milk substitutes, honey-based beverages, tomato juice beverages, mineral water, mineral and aerated waters, fruit beverages and fruit juices, fruit juices, smoothies, fruit-based beverages, frozen fruit beverages, fruit squashes,</p>
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	<p>fruit nectars, non-alcoholic fruit nectars, nonalcoholic fruit extracts, frozen fruit drinks, mixed fruit juice, non-alcoholic fruit drinks, fruit flavoured soft drinks, syrups for making fruit-flavoured drinks, concentrates for making fruit juices, ice fruit beverages, part-frozen slush drinks, fruit-flavoured carbonated drinks, non-alcoholic aloe vera drinks, sorbets [beverages], sherbets [beverages], squashes, red ginseng juice beverages, smoked plum beverages, pineapple juice beverages, grape juice beverages, orange juice beverages, apple juice beverages, syrups and other non-alcoholic preparations for making beverages, syrups for making soft drinks, malt wort, non-alcoholic beverages containing malt , malt and malt extracts for making beverages. malt syrup for beverages, powders used in the preparation of fruit-based beverages, pastilles for effervescing beverages, powders for effervescing beverages, preparations for making beverages, alcoholic beverages, except beers, spirits, distilled spirits, liqueurs, alcoholic carbonated beverages, except beer, ciders, sweet or hard cider, alcoholic fruit beverages, alcoholic energy drinks, alcoholic egg nog, edible alcoholic beverages, low alcoholic drinks, alcoholic cocktails containing milk,</p>
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	<p>alcoholic tea-based beverage, alcoholic fruit cocktail drinks, alcoholic coffee-based beverage, alcoholic beverages except beers, pre-mixed alcoholic beverages, alcoholic cocktails in the form of chilled gelatines, wines, low-alcoholic wine, red wines, rose wines, prepared wine cocktails, natural sparkling wines, mulled wines, white wines, rums, spiced rum, white rum, aged rum, dark rum, vodkas, vodka mixtures, mixed alcoholic drinks containing vodka, alcoholic beverages containing vodka, whiskeys, malt whisky, gin, flavoured gin, gin-based beverages, fruit-infused gins, cucumber-infused gin, sloe gin, grappas, tequilas, ports, kirsches, arracks, brandies, calvados, cachaças, alcopops, araks, aperitifs, anisette, sakes, sangrias, sherries, schnapps, vermouths, rice alcohols, brandies, scotch, bourbons, prepared alcoholic cocktails, alcoholic preparations for making beverages, alcoholic essences, alcoholic cordials, alcoholic punches, alcoholic bitters, alcoholic jellies, alcoholic extracts, prepared alcoholic cocktails, alcoholic fruit extracts, alcoholic cocktail mixes, alcoholic aperitif bitters, alcoholic cordials containing vodka, alcoholic extracts containing vodka, alcoholic bitters containing vodka.</p>
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19. In its statement of grounds, the opponent argues that the parties' goods in class 33 are identical, and that the applicant's goods in class 32 and services in class 35 are highly similar to the opponent's goods. In its counterstatement, the applicant denies that the applicant's goods and services are identical or similar to the opponent's goods. It argues that "the respective goods and services differ significantly in nature, purpose, channels of trade, methods of marketing, and the expectations of the average consumer".

20. For the purposes of comparing goods and services, it is permissible to consider groups of terms collectively where they are sufficiently comparable to be assessed in essentially the same way and for the same reasons.<sup>7</sup> I have therefore assessed the applicant's goods and services by dividing the terms into groups as per below.

Class 33:

*Alcoholic beverages, except beers; spirits; distilled spirits; liqueurs; alcoholic carbonated beverages, except beer; ciders; sweet or hard cider; alcoholic fruit beverages; alcoholic energy drinks; alcoholic egg nog; edible alcoholic beverages; low alcoholic drinks; alcoholic cocktails containing milk; alcoholic tea-based beverage; alcoholic fruit cocktail drinks; alcoholic coffee-based beverage; alcoholic beverages except beers; pre-mixed alcoholic beverages; wines; low-alcoholic wine; red wines; rose wines; prepared wine cocktails; natural sparkling wines; mulled wines; white wines; rums; spiced rum; white rum; aged rum; dark rum; vodkas; vodka mixtures; mixed alcoholic drinks containing vodka; alcoholic beverages containing vodka; whiskeys; malt whisky; gin; flavoured gin; gin-based beverages; fruit-infused gins; cucumber-infused gin; sloe gin; grappas; tequilas; ports; kirsches; arracks; brandies; calvados; cachaças; alcopops; araks; aperitifs; anisette; sakes; sangrias; sherries; schnapps; vermouths; rice alcohols; brandies; scotch; bourbons; prepared alcoholic cocktails; alcoholic cordials; alcoholic punches; alcoholic bitters; prepared alcoholic cocktails; alcoholic cocktail mixes; alcoholic aperitif bitters; alcoholic cordials containing vodka; alcoholic bitters containing vodka.*

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<sup>7</sup> *Separode Trade Mark* (BL O/399/10) and *BVBA Management, Training en Consultancy v. Benelux-Merkenbureau* [2007] ETMR 35 at paragraphs 30 to 38

21. The applicant's term *alcoholic beverages, except beers* is identical to the opponent's *alcoholic beverages (with the exception of beers)* on a literal basis. The other terms above are all narrower terms within the wider term *alcoholic beverages, except beers* and are therefore identical to the opponent's goods under the principle outlined in *Meric*.

*Alcoholic preparations for making beverages; alcoholic essences; alcoholic extracts; alcoholic fruit extracts; alcoholic extracts containing vodka.*

22. These goods are not identical to the opponent's *alcoholic beverages, except beer* as they are not alcoholic beverages per se; rather, they are preparations which are used to make alcoholic beverages, as per the ordinary natural meaning of the terms. The users, use, and nature will differ, as these goods will be bought as components bought in a raw state primarily by professionals in order to produce alcoholic drinks, whereas the opponent's goods will be bought as an alcoholic finished product by the general public and will be drunk for pleasure. Given these differences, they are unlikely to appear in the same trade channels. They are unlikely to be seen as complementary as the goods are not indispensable in such a way that the consumer believes they come from the same undertaking. Given their different purposes, they are not in competition with each other. Taking all these factors into account, it is my view that the competing parties' goods are similar to a low degree.

*Alcoholic jellies; alcoholic cocktails in the form of chilled gelatines.*

23. It is my view that these goods are not identical to *alcoholic beverages, except beer* as they are sold in jelly/gelatin form rather than liquid form. However, the goods' users and use overlap as they are alcoholic products which will be consumed by the general public for pleasure and the alcoholic effects. They will be sold through the same trade channels and are likely to appear close to each other within those retail environments. They are unlikely to be seen as complementary, as one is not essential to the other. However, there may be a degree of competition, as users will choose whether to consume alcohol via a liquid or a jelly. Taking all these factors into account, it is my view that the goods are similar to a high degree.

Class 32:

*Non-alcoholic beverages; non-alcoholic gin flavoured drinks, whether flavoured with extracts of gin, botanicals or gin flavourings; alcoholfree beverages; dealcoholised drinks; nonalcoholic drinks; carbonated non-alcoholic drinks; beverages; effervescing beverages.*

24. In *Absolut Company Aktiebolag v Dongguan Topson Electronic Technology Co. Ltd*<sup>8</sup>, Phillip Johnson, as the Appointed Person, identified the following considerations relevant to the comparison of alcoholic beverages and other drinks:

“13. First, the fact that spirits are mixed with soft-drinks (mixers) does not make the products complimentary (Yilmaz, [55]; Wesergold, [40]; CHIC, [53 to 55]), but it does mean there is a partial (but not significant) overlap between spirits and soft drinks (Wesergold, [32 and 33]

14. Second, soft-drinks, water and (possibly) beer are drunk to quench the thirst (Yilmaz, [54]; Wesergold, [35 and 36]; ROSALIA DE CASTRO, [31]; the CHIC case takes a different view that low alcoholic drinks are not consumed to quench thirst, CHIC, [44]), but in any event spirits are not consumed to quench thirst (Yilmaz, [54]; Wesergold, [35 and 36]

15. Thirdly, the methods of production for alcoholic drinks (and between alcoholic drinks and non-alcoholic drinks) differ and this is relevant to the similarity between them: Mezzopane, [64 and 69]; Bodegas, [29]; Yilmaz, [54]. Likewise, products which are processed versions of each other might be more similar (eg wine and Brandy): Vanhove, [87]

16. Fourthly, the differences between the colour, aroma and taste of two alcoholic drinks suggests to consumers that they are different: Mezzopane, [65]; Yilmaz, [54]

17. Finally, the alcoholic content of the goods is a very relevant factor in determining the similarity of the goods: Bodegas, [32]; Wesergold, [31]; CHIC, [40 and 41]; FLÜGEL, [84]. However, a non-alcoholic version of an equivalent

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<sup>8</sup> BL O/0488/25

alcoholic drink is likely to be highly similar to it: CERVISIA, [20]. Nevertheless, the Grand Board highlighted that a drink's alcoholic content is only a factor."

25. The wide terms *non-alcoholic beverages*, *alcoholfree beverages*, *dealcoholised drinks*, *nonalcoholic drinks*, and *carbonated non-alcoholic drinks* are broad and encompass goods such as juices and water, as well as non-alcoholic versions of alcoholic beverages such as wines and spirits, or non-alcoholic cocktails. I have also included the applicant's wide terms *beverages* and *effervescing beverages* because they will cover non-alcoholic versions of the opponent's *alcoholic beverages (with the exception of beers)* in class 33, such as non-alcoholic wines, spirits and cocktails. I am aware that it is common for alcohol manufacturers to offer alcohol-free wine and 0% alcohol alternatives to spirits (such as the applicant's narrower term *non-alcoholic gin flavoured drinks, whether flavoured with extracts of gin, botanicals or gin flavourings*), as well as pre-mixed, non-alcoholic cocktails. The goods' nature will overlap as both are liquid beverages. The users of both the opponent's goods and the applicant's goods will be the general public. As such, the applicant's goods could feasibly include non-alcoholic based beverages which will be sold through the same trade channels and are likely to be situated in relatively close proximity to the opponent's alcoholic beverages in retail environments. Further, there will be an element of competition between such goods, as consumers at times may wish to choose between the alcoholic and alcohol-free versions of drinks. Given the broad nature of the terms of both parties, I find the applicant's terms above to be similar to the opponent's term *alcoholic beverages, except beer* in class 33 to a high degree.

*Beers; lagers; stouts; ales; kvass; porters; malt beers; imitation beers; wheat beers; flavoured beers; root beers; black beers; beer worts; flavoured beers; beers for use as dieting or slimming aids; beer-based beverages; coffee-flavoured beers; low alcohol beers; beer-based cocktails; beers enriched with minerals; beers containing fruit and/or vegetable juices and/or milk; beer and brewery products.*

26. There is an overlap in users and use of the applicant's beer-related goods and the opponent's *alcoholic beverages (except beer)* in that they are consumed for pleasure by consumers over 18 years of age. The goods' nature will be the same, in as much as they will be sold as liquids. That said, the taste and ingredients will differ and so too

may the alcoholic content of the respective goods. They are likely to be sold through the same trade channels. At times they may be positioned in relatively close proximity in physical retail outlets such as supermarkets and off-licences, although not necessarily in the same areas within the alcohol section. There may be an element of competition between the goods, as consumers may at times choose which type of alcoholic beverage to consume. I do not consider the goods to be complementary as the average consumer is unlikely to expect beer-related goods and non-beer alcoholic beverages to originate from the same undertaking, particularly given their different methods of production<sup>9</sup>. Taking these factors into account, I find there to be a low degree of similarity between the competing parties' goods.

*Non-alcoholic beers; de-alcoholised beers; non-alcoholic beer flavoured beverages; non-alcoholic kvass; non-alcoholic beverages containing malt.*

27. Given my finding of a low degree of similarity between the applicant's term *beers* and the opponent's broad term *alcoholic beverages, except beers*, I consider these terms referring to non-alcoholic beers (or similar products containing malt) to be even further removed from the opponent's goods in class 33. I therefore find the competing parties' goods to be, at best, similar to a very low degree.

*Soft drinks; vegetable drinks; energy drinks; cola drinks; isotonic drinks; energy drinks containing caffeine; low-calorie soft drinks; sports drinks containing electrolytes; isotonic non-alcoholic drinks; beverages containing vitamins; tonic water; non-alcoholic beverages with tea flavour; soya-based beverages, other than milk substitutes; honey-based beverages; tomato juice beverages; mineral water; mineral and aerated waters; fruit beverages and fruit juices; fruit juices; smoothies; fruit-based beverages; frozen fruit beverages; fruit nectars; non-alcoholic fruit nectars; frozen fruit drinks; mixed fruit juice; nonalcoholic fruit drinks; fruit flavoured soft drinks; ice fruit beverages; part-frozen slush drinks; fruit-flavoured carbonated drinks; non-alcoholic aloe vera drinks; sorbets [beverages]; sherbets [beverages]; squashes; red ginseng juice beverages; smoked plum beverages; pineapple juice beverages; grape juice beverages;*

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<sup>9</sup> As per *Mezzopane*, [64 and 69]; *Bodegas*, [29]; *Yilmaz*, [54].

*orange juice beverages; apple juice beverages; ginger ales; ginger beers; dry ginger ales.*

28. The applicant's goods above are soft drinks. Although the competing goods' users will overlap in that both will be consumed by the general public, the opponent's *alcoholic beverage (with the exception of beers)* are aimed exclusively at consumers over the age of 18. Their nature and method of use overlaps to the extent that the competing goods are all types of liquid which will be drunk. However, the opponent's goods have alcoholic content whereas the applicant's goods have none which, in turn, means that the respective tastes will differ and the ingredients are not the same. In terms of respective purpose, although there is some degree of similarity to the extent that the opponent's goods may sometimes be consumed, like the applicant's goods, for refreshment purposes, the opponent's goods are primarily consumed, at least to some extent, to experience the effects of alcohol. The applicant's goods do not share that purpose. Whilst there may be an overlap in trade channels at a general level with both parties' goods being sold in supermarkets and the like they are unlikely to be stocked in the same aisles or in close proximity to each other. I also do not consider them to be complementary because one is not essential nor important to the other in such a way that consumers are likely to think that the same undertaking is responsible for them. They are also unlikely to be in competition with each other. Taking all these factors into consideration, I find there to be a very low degree of similarity between the goods.

*Malt and malt extracts for making beverages; malt syrup for beverages; pastilles for effervescing beverages; powders for effervescing beverages; processed hops for use in making beers; hop extracts for manufacturing beer; malt wort.*

29. These goods are used in making soft drinks or beer. I am of the view that they differ from the opponent's *alcoholic beverages (with the exception of beers)*. They will have different users, use, and nature, as these goods will be bought as components bought in a raw state primarily by professionals in order to produce beer or soft drinks, whereas the opponent's goods will be bought as a finished product by the general public and will be drunk for pleasure. Given these differences, they are unlikely to appear in the same trade channels. I do not consider them complementary as the

applicant's goods for producing beer are not essential to *alcoholic beverages (with the exception of beers)* and consumers are not likely to believe the responsibility for producing the goods lies with the same undertaking. Taking all of these factors into account, it is my view that the competing parties' goods are dissimilar.

*Syrups and other non-alcoholic preparations for making beverages; syrups for making soft drinks; syrups for making fruit-flavoured drinks; concentrates for making fruit juices; preparations for making beverages; non-alcoholic fruit extracts; fruit squashes; powders used in the preparation of fruit-based beverages.*

30. The applicant's goods are preparations and concentrates which are used to make non-alcoholic beverages by diluting them with water. Their use and nature therefore differs from that of the opponent's *alcoholic beverages (with the exception of beers)*, which is a finished product containing alcohol. However, whilst *powders used in the preparation of soft drinks* will be sold in solid form, there is some overlap in nature between the opponent's term and the concentrates, which will also be sold as liquids. In addition to this, whilst there is an overlap in the goods' broad purpose as all are ultimately used to provide refreshment, the applicant's goods' specific purpose is to be used within the preparation of a beverage. They will be sold through the same trade channels, but are likely to appear in different places within those retail environments, given that *alcoholic beverages (with the exception of beers)* are likely to be sold in the alcohol section, whereas the applicant's concentrate goods are likely to be found in different sections relating to beverage preparation. The competing parties' goods are not essential to one another, consumers are unlikely to think that the responsibility lies with the same undertaking given the goods' differences in purpose, nature, and use. As such, it is my view that the goods are not complementary. I am also of the opinion that the goods are unlikely to be in competition with each other, given that people wishing to buy *alcoholic beverages (with the exception of beers)* as a finished product to drink are unlikely to substitute it with a preparation to make a drinkable finished product, and vice versa. Taking all of these factors into account, if there is any similarity between the goods at all, then I find that it is only a very low degree at best.

Class 35:

*Electronic and online shopping retail services in relation to drink products; online and offline retail, wholesale, import and export services relating to the sale of [...]alcoholic beverages, except beers, spirits, distilled spirits, liqueurs, alcoholic carbonated beverages, except beer, ciders, sweet or hard cider, alcoholic fruit beverages, alcoholic energy drinks, alcoholic egg nog, edible alcoholic beverages, low alcoholic drinks, alcoholic cocktails containing milk, alcoholic tea-based beverage, alcoholic fruit cocktail drinks, alcoholic coffee-based beverage, alcoholic beverages except beers, pre-mixed alcoholic beverages, wines, low-alcoholic wine, red wines, rose wines, prepared wine cocktails, natural sparkling wines, mulled wines, white wines, rums, spiced rum, white rum, aged rum, dark rum, vodkas, vodka mixtures, mixed alcoholic drinks containing vodka, alcoholic beverages containing vodka, whiskeys, malt whisky, gin, flavoured gin, gin-based beverages, fruit-infused gins, cucumber-infused gin, sloe gin, grappas, tequilas, ports, kirsches, arracks, brandies, calvados, cachaças, alcopops, araks, aperitifs, anisette, sakes, sangrias, sherries, schnapps, vermouths, rice alcohols, brandies, scotch, bourbons, prepared alcoholic cocktails, [...], alcoholic cordials, alcoholic punches, alcoholic bitters, [...], prepared alcoholic cocktails, [...], alcoholic cocktail mixes, alcoholic aperitif bitters, alcoholic cordials containing vodka, [...], alcoholic bitters containing vodka, beverages.<sup>10</sup>*

31. In *Oakley, Inc v OHIM*<sup>11</sup>, at paragraphs 46-57, the GC held that although retail services are different in nature, purpose and method of use to goods, retail services for particular goods may be complementary to those goods, and distributed through the same trade channels, and therefore similar to a degree.

32. In *Tony Van Gulck v Wasabi Frog Ltd*<sup>12</sup>, Mr Geoffrey Hobbs Q.C. (as he then was) as the Appointed Person reviewed the law concerning retail services v goods. On the basis of the European courts' judgments in *Sanco SA v OHIM*<sup>13</sup>, and *Assembled*

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<sup>10</sup> 'Retail of...beverages' would include identical beverages to the opponent's beverages and therefore have been included here. In the context of the retail term in class 35, the term 'beverages' covers all beverages, including those in classes 32 and 33.

<sup>11</sup> Case T-116/06

<sup>12</sup> Case BL O/391/14

<sup>13</sup> Case C-411/13 P

*Investments (Proprietary) Ltd v. OHIM*<sup>14</sup>, upheld on appeal in *Waterford Wedgwood Plc v. Assembled Investments (Proprietary) Ltd*<sup>15</sup>, Mr Hobbs concluded that:

- i) Goods and services are not similar on the basis that they are complementary if the complementarity between them is insufficiently pronounced that, from the consumer's point of view, they are unlikely to be offered by one and the same undertaking;
- ii) In making a comparison involving a mark registered for goods and a mark proposed to be registered for retail services (or vice versa), it is necessary to envisage the retail services normally associated with the opponent's goods and then to compare the opponent's goods with the retail services covered by the applicant's trade mark;
- iii) It is not permissible to treat a mark registered for 'retail services for goods X' as though the mark was registered for goods X;
- iv) The General Court's findings in *Oakley* did not mean that goods could only be regarded as similar to retail services where the retail services related to exactly the same goods as those for which the other party's trade mark was registered (or proposed to be registered)

33. It is clear from the case law that where the applicant's retail-related services are to be compared with the opponent's goods, or vice versa, those services will be different in nature, purpose and method of use to those goods. However, there may be similarity in respect of the goods and the services at issue, providing that there is some complementarity and/or shared trade channels.

34. Earlier in this decision, I have found the alcoholic goods listed in the services above to be identical to the opponent's goods. The nature, purpose, and use will differ between these services and the opponent's goods *alcoholic beverages (with the exception of beers)*. However, it is my view that there will be an overlap in the goods' users and services relating to them. They will also have the same trade channels as one another. The services cannot be provided without the goods so the latter are

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<sup>14</sup> Case T-105/05, at paragraphs [30] to [35] of the judgment

<sup>15</sup> Case C-398/07 P

indispensable to the former. As consumers could reasonably expect them to be offered by the same undertaking, I am of the view that they are complementary to one another. However, the goods are unlikely to be in competition with the services. Taking all of these factors into account, I find that there is a medium degree of similarity between the applicant's services above and the opponent's goods.

*Online and offline retail, wholesale, import and export services relating to the sale of [...] alcoholic preparations for making beverages, alcoholic essences, [...], alcoholic extracts, [...], alcoholic fruit extracts, [...], alcoholic extracts containing vodka [...].*

35. Earlier in the decision I found the goods listed in the services above to be similar to a low degree at best to the opponent's goods. The nature, purpose, and use will differ between these services and the opponent's goods *alcoholic beverages (with the exception of beers)*. Whilst there may be an overlap in trade channels and the users of the goods and services may sometimes be the same they are not complementary as they are not indispensable to one another. The goods are also unlikely to be in competition with the services. Taking all of these factors into account, I find that there is a very low degree of similarity between the applicant's services above and the opponent's goods.

*Online and offline retail, wholesale, import and export services relating to the sale of [...] alcoholic jellies; alcoholic cocktails in the form of chilled gelatines [...].*

36. Earlier in this decision I found the goods listed in the service above to be similar to a high degree to the opponent's goods. The nature, purpose, and use will differ between these services and the opponent's goods *alcoholic beverages (with the exception of beers)*. However, it is my view that there will be an overlap in the users of the goods and services, who will be the general public. They will also have the same trade channels as one another. The goods which are the subject of the applicant's services may be sold alongside, and as alternatives to, the opponent's goods and are therefore likely to be the subject of the same retail, wholesale and import and export services as the opponent's goods. The applicant's services may therefore be important for the sale of the opponent's goods. Consequently, it is plausible that the average

consumer may believe that an undertaking selling the opponent's goods is the same or connected to an undertaking providing the services above. There is, therefore, a degree of complementarity in play. The goods are unlikely to be in competition with the services. Taking all of these factors into account, I find that there is a slightly below-medium (but not low) degree of similarity between the applicant's services above and the opponent's goods.

*Online and offline retail, wholesale, import and export services relating to the sale of [...] non-alcoholic gin flavoured drinks, whether flavoured with extracts of gin, botanicals or gin flavourings, [...], dealcoholised drinks, [...], nonalcoholic drinks, carbonated non-alcoholic drinks, [...], alcoholfree beverages, [...], effervescing beverages, [...], non-alcoholic beverages.*

37. Earlier in this decision, I found the non-alcoholic goods above (which include alcohol-free versions of the opponent's goods) to be similar to a high degree to the opponent's goods. The nature, purpose, and use will differ between these services and the opponent's goods *alcoholic beverages (with the exception of beers)*. However, there will be an overlap in the users of the goods and services, who will be the general public. The goods which are the subject of the applicant's services may be sold in close proximity, and as alternative non-alcoholic versions of the opponent's goods, and are therefore likely to be the subject of the same retail, wholesale and import and export services as the opponent's goods. The applicant's services may therefore be important for the sale of the opponent's goods. Consequently, it is plausible that the average consumer may believe that an undertaking selling the opponent's goods is the same or connected to an undertaking providing the services above. There is, therefore, a degree of complementarity in play. The goods are unlikely to be in competition with the services. Taking all of these factors into account, I find that there is a slightly below-medium (but not low) degree of similarity between the applicant's services above and the opponent's goods.

*Online and offline retail, wholesale, import and export services relating to the sale of beers, lagers, stouts, ales, kvass, porters, malt beers, imitation beers, wheat beers, flavoured beers, root beers, black beers, beer worts, ginger ales, ginger beers, dry ginger ales, flavoured beers, beers for use as dieting or slimming aids, beer-based beverages, coffee-flavoured beers, low alcohol*

*beers, beer-based cocktails, beers enriched with minerals, beers containing fruit and/or vegetable juices and/or milk, processed hops for use in making beers, beer and brewery products, hop extracts for manufacturing beer, non-alcoholic beers, de-alcoholised beers, non-alcoholic beer flavoured beverages, [...], soft drinks, vegetable drinks, energy drinks, cola drinks, isotonic drinks, [...], energy drinks containing caffeine, low-calorie soft drinks, [...], sports drinks containing electrolytes, isotonic non-alcoholic drinks, beverages containing vitamins, tonic water, non-alcoholic beverages with tea flavour, non-alcoholic kvass, soya-based beverages, other than milk substitutes, honey-based beverages, tomato juice beverages, mineral water, mineral and aerated waters, fruit beverages and fruit juices, fruit juices, smoothies, fruit-based beverages, frozen fruit beverages, fruit squashes, fruit nectars, non-alcoholic fruit nectars, nonalcoholic fruit extracts, frozen fruit drinks, mixed fruit juice, non-alcoholic fruit drinks, fruit flavoured soft drinks, syrups for making fruit-flavoured drinks, concentrates for making fruit juices, ice fruit beverages, part-frozen slush drinks, fruit-flavoured carbonated drinks, non-alcoholic aloe vera drinks, sorbets [beverages], sherbets [beverages], squashes, red ginseng juice beverages, smoked plum beverages, pineapple juice beverages, grape juice beverages, orange juice beverages, apple juice beverages, syrups and other non-alcoholic preparations for making beverages, syrups for making soft drinks, malt wort, non-alcoholic beverages containing malt, malt and malt extracts for making beverages. malt syrup for beverages, powders used in the preparation of fruit-based beverages, pastilles for effervescing beverages, powders for effervescing beverages, preparations for making beverages.*

38. The above term relates to the retail, wholesale, import and export of goods which I have already found to have a low or very low degree of similarity with the opponent's goods, and I have found some of the goods relating to beer production to be dissimilar. It therefore follows that the services relating to these goods will also have a lower degree of similarity than what I have found for the goods, given the additional differences relating to the nature, purpose, and use of the goods and services. I therefore find that the services relating to the goods above are dissimilar to the opponent's *alcoholic beverages (with the exception of beers)*.

## Comparison of goods and services summary

39. Some similarity between goods is essential for engaging the test of the likelihood of confusion. In *eSure Insurance v Direct Line Insurance*<sup>16</sup>, Lady Justice Arden stated that:

“49. ...If there is no similarity at all, there is no likelihood of confusion to be considered. If there is some similarity, then the likelihood of confusion has to be considered but it is unnecessary to interpose a need to find a minimum level of similarity.”

40. As I have found no similarity for the following goods and services, the opposition under section 5(2)(b) fails in relation to them:

Class 32: *Malt and malt extracts for making beverages; malt syrup for beverages; pastilles for effervescing beverages; powders for effervescing beverages; processed hops for use in making beers; hop extracts for manufacturing beer; malt wort.*

Class 35: *Online and offline retail, wholesale, import and export services relating to the sale of beers, lagers, stouts, ales, kvass, porters, malt beers, imitation beers, wheat beers, flavoured beers, root beers, black beers, beer worts, ginger ales, ginger beers, dry ginger ales, flavoured beers, beers for use as dieting or slimming aids, beer-based beverages, coffee-flavoured beers, low alcohol beers, beer-based cocktails, beers enriched with minerals, beers containing fruit and/or vegetable juices and/or milk, processed hops for use in making beers, beer and brewery products, hop extracts for manufacturing beer, non-alcoholic beers, de-alcoholised beers, non-alcoholic beer flavoured beverages, soft drinks, vegetable drinks, energy drinks, cola drinks, isotonic drinks, energy drinks containing caffeine, low-calorie soft drinks, sports drinks containing electrolytes, isotonic non-alcoholic drinks, beverages containing vitamins, tonic water, non-alcoholic beverages with tea flavour, non-alcoholic kvass, soya-based beverages, other than milk substitutes, honey-based beverages, tomato juice beverages, mineral water, mineral and aerated waters,*

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<sup>16</sup> [2008] ETMR 77 CA

*fruit beverages and fruit juices, fruit juices, smoothies, fruit-based beverages, frozen fruit beverages, fruit squashes, fruit nectars, non-alcoholic fruit nectars, nonalcoholic fruit extracts, frozen fruit drinks, mixed fruit juice, non-alcoholic fruit drinks, fruit flavoured soft drinks, syrups for making fruit-flavoured drinks, concentrates for making fruit juices, ice fruit beverages, part-frozen slush drinks, fruit-flavoured carbonated drinks, non-alcoholic aloe vera drinks, sorbets [beverages], sherbets [beverages], squashes, red ginseng juice beverages, smoked plum beverages, pineapple juice beverages, grape juice beverages, orange juice beverages, apple juice beverages, syrups and other non-alcoholic preparations for making beverages, syrups for making soft drinks, malt wort, non-alcoholic beverages containing malt, malt and malt extracts for making beverages, malt syrup for beverages, powders used in the preparation of fruit-based beverages, pastilles for effervescing beverages, powders for effervescing beverages, preparations for making beverages.*

41. I will now go on to consider whether there exists a likelihood of confusion under section 5(2)(b) for the following goods and services which I have found to be either identical or similar (even if only to a very low degree) to the opponent's goods:

*Class 32: Beers; lagers; stouts; ales; kvass; porters; malt beers; imitation beers; wheat beers; flavoured beers; root beers; black beers; beer worts; ginger ales; ginger beers; dry ginger ales; flavoured beers; beers for use as dieting or slimming aids; beer-based beverages; coffee-flavoured beers; low alcohol beers; beer-based cocktails; beers enriched with minerals; beers containing fruit and/or vegetable juices and/or milk; beverages; non-alcoholic beverages; non-alcoholic beers; de-alcoholised beers; non-alcoholic beer flavoured beverages; non-alcoholic gin flavoured drinks, whether flavoured with extracts of gin, botanicals or gin flavourings; soft drinks; vegetable drinks; energy drinks; cola drinks; isotonic drinks; dealcoholised drinks; energy drinks containing caffeine; low-calorie soft drinks; nonalcoholic drinks; carbonated non-alcoholic drinks; sports drinks containing electrolytes; isotonic non-alcoholic drinks; beverages containing vitamins; alcoholfree beverages; tonic water; effervescing beverages; non-alcoholic beverages with tea flavour; non-alcoholic kvass; soya-based beverages, other than milk substitutes; honey-*

*based beverages; tomato juice beverages; mineral water; mineral and aerated waters; fruit beverages and fruit juices; fruit juices; smoothies; fruit-based beverages; frozen fruit beverages; fruit squashes; fruit nectars; non-alcoholic fruit nectars; non-alcoholic fruit extracts; frozen fruit drinks; mixed fruit juice; nonalcoholic fruit drinks; fruit flavoured soft drinks; syrups for making fruit-flavoured drinks; concentrates for making fruit juices; ice fruit beverages; part-frozen slush drinks; fruit-flavoured carbonated drinks; non-alcoholic aloe vera drinks; sorbets [beverages]; sherbets [beverages]; squashes; red ginseng juice beverages; smoked plum beverages; pineapple juice beverages; grape juice beverages; orange juice beverages; apple juice beverages; syrups and other non-alcoholic preparations for making beverages; syrups for making soft drinks; non-alcoholic beverages containing malt.*

*Class 33:* *Alcoholic beverages, except beers; spirits; distilled spirits; liqueurs; alcoholic carbonated beverages, except beer; ciders; sweet or hard cider; alcoholic fruit beverages; alcoholic energy drinks; alcoholic egg nog; edible alcoholic beverages; low alcoholic drinks; alcoholic cocktails containing milk; alcoholic tea-based beverage; alcoholic fruit cocktail drinks; alcoholic coffee-based beverage; alcoholic beverages except beers; pre-mixed alcoholic beverages; alcoholic cocktails in the form of chilled gelatines; wines; low-alcoholic wine; red wines; rose wines; prepared wine cocktails; natural sparkling wines; mulled wines; white wines; rums; spiced rum; white rum; aged rum; dark rum; vodkas; vodka mixtures; mixed alcoholic drinks containing vodka; alcoholic beverages containing vodka; whiskeys; malt whisky; gin; flavoured gin; gin-based beverages; fruit-infused gins; cucumber-infused gin; sloe gin; grappas; tequilas; ports; kirshes; arracks; brandies; calvados; cachaças; alcopops; araks; aperitifs; anisette; sakes; sangrias; sherries; schnapps; vermouths; rice alcohols; brandies; scotch; bourbons; prepared alcoholic cocktails; alcoholic preparations for making beverages; alcoholic essences; alcoholic cordials; alcoholic punches; alcoholic bitters; alcoholic jellies; alcoholic extracts; prepared alcoholic cocktails; alcoholic fruit extracts; alcoholic cocktail mixes; alcoholic aperitif bitters; alcoholic cordials containing vodka; alcoholic extracts containing vodka; alcoholic bitters containing vodka.*

Class 35: *Electronic and online shopping retail services in relation to drink products; online and offline retail, wholesale, import and export services relating to the sale of non-alcoholic gin flavoured drinks, whether flavoured with extracts of gin, botanicals or gin flavourings, dealcoholised drinks, nonalcoholic drinks, carbonated non-alcoholic drinks, alcoholfree beverages, effervescing beverages, non-alcoholic beverages, alcoholic beverages, except beers, spirits, distilled spirits, liqueurs, alcoholic carbonated beverages, except beer, ciders, sweet or hard cider, alcoholic fruit beverages, alcoholic energy drinks, alcoholic egg nog, edible alcoholic beverages, low alcoholic drinks, alcoholic cocktails containing milk, alcoholic tea-based beverage, alcoholic fruit cocktail drinks, alcoholic coffee-based beverage, alcoholic beverages except beers, pre-mixed alcoholic beverages, alcoholic cocktails in the form of chilled gelatines, wines, low-alcoholic wine, red wines, rose wines, prepared wine cocktails, natural sparkling wines, mulled wines, white wines, rums, spiced rum, white rum, aged rum, dark rum, vodkas, vodka mixtures, mixed alcoholic drinks containing vodka, alcoholic beverages containing vodka, whiskeys, malt whisky, gin, flavoured gin, gin-based beverages, fruit-infused gins, cucumber-infused gin, sloe gin, grappas, tequilas, ports, kirsches, arracks, brandies, calvados, cachaças, alcopops, araks, aperitifs, anisette, sakes, sangrias, sherries, schnapps, vermouths, rice alcohols, brandies, scotch, bourbons, prepared alcoholic cocktails, alcoholic preparations for making beverages, alcoholic essences, alcoholic cordials, alcoholic punches, alcoholic bitters, alcoholic jellies, alcoholic extracts, prepared alcoholic cocktails, alcoholic fruit extracts, alcoholic cocktail mixes, alcoholic aperitif bitters, alcoholic cordials containing vodka, alcoholic extracts containing vodka, alcoholic bitters containing vodka; non-alcoholic gin flavoured drinks, whether flavoured with extracts of gin, botanicals or gin flavourings, dealcoholised drinks, nonalcoholic drinks, carbonated non-alcoholic drinks, alcoholfree beverages, effervescing beverages, beverages.*

### **Average consumer and the purchasing act**

42. 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 and services in question: *Lloyd Schuhfabrik Meyer*<sup>17</sup>.

43. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*<sup>18</sup>, Birss J (as he then was) described the average consumer in these terms:

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

44. The average consumer for the goods will be the public at large, as well as trade customers. The cost of purchase is likely to vary, but overall, the price will be relatively inexpensive. They will be purchased on a frequent basis. Several factors may influence the average consumer when purchasing the goods, such as, inter alia, the type of ingredients used, the volume of alcohol, and the taste. For the lower priced goods such as inexpensive cans of premixed cocktails, the selection process is likely to be more casual than careful, but for higher priced goods such as relatively expensive bottles of spirits, consumers will pay more attention. Taking into account all of these factors, it is my view that the average consumer will pay around a medium degree of attention, although I appreciate that this will be higher in the case of trade customers. The goods will be bought in retail outlets such as supermarkets, specialist drinks stores, or their online equivalents. The customer will self-select the goods from display shelves, or by selecting the image of their desired product if purchasing online. The visual component will therefore dominate the selection process. However, I do not discount the role that aural selection may play when purchasing, such as through

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<sup>17</sup> Case C-342/97

<sup>18</sup> [2014] EWHC 439 (Ch)

word-of-mouth recommendations, making verbal orders, or when discussing the goods with staff.

45. The average consumer for the services will be the public at large, as well as trade customers. The cost of purchase is likely to vary greatly for the retail of the goods above depending on the type of drink being sold. Several factors may influence consumers, such as the range of drink options, the opening times, and the presentation of the premises. Taking into account all of these factors, it is my view that the average consumer is likely to pay a medium degree of attention. The consumer will choose the services after seeing the mark on signage or on the premises. They may also select the services after seeing advertisements or reviews in printed publications or online via websites and/or social media. The visual component is therefore likely to dominate the selection process, but I also do not discount the role that aural selection may play, especially when receiving word-of-mouth recommendations and when discussing the services with others via the telephone.

### **Comparison of marks**

46. 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 *Bimbo SA v OHIM*<sup>19</sup>, 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





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

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<sup>19</sup> Case C-591/12P

and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

48. The respective trade marks are shown below:

The opponent's IRs	The applicant's mark
<p data-bbox="331 533 657 566">FREIXENET ELYSSIA</p> <p data-bbox="209 622 395 656">(the word IR)</p>     <p data-bbox="209 1615 456 1648">(the figurative IR)</p>	<p data-bbox="1034 533 1161 566">ELYSEE</p>

49. The opponent's word IR consists of the two words, "FREIXENET" and "ELYSSIA" written in upper case. Neither "FREIXENET" nor "ELYSSIA" will be understood as descriptive or allusive in relation to the goods, either alone or in combination. I find that both words play an equal and independent role in the word IR's overall impression.

50. The opponent's figurative IR consists of six images of a 3D bottle taken from a variety of angles. On the label of the bottle is the word "ELYSSIA" written in a large,

plain typeface. Above it is the word “Freixenet” written in title case. Due to the principle that the eye is naturally drawn to elements of marks which can be read (see paragraph 37 of *Wassen International Ltd v OHIM (SELENIUM-ACE)*<sup>20</sup>) the verbal elements are more dominant in the figurative IR’s overall impression. The word “Freixenet” is much smaller, and it is written in a very stylised and less legible typeface. Due to the much larger size and increased legibility of the word “ELYSSIA”, I find that this component plays the greatest role within the overall impression of the figurative IR, and the smaller word “Freixenet” plays a secondary role. The non-distinctive elements such as the 3D bottle itself and the label still contribute, but to a much lesser degree.

### Visual comparison

51. In its submissions in lieu, the opponent argues that the marks are visually highly similar. It highlights that the words start identically and “consist of just one letter less”. In its counterstatement, the applicant submits that the applicant’s mark is visually distinct from the opponent’s IR.

52. The opponent’s word-only IR is visually similar to the applicant’s mark as the second word of the opponent’s IR begins with the same four letters, “ELYS-“. The marks differ visually as the opponent’s IR also contains the word “FREIXENET” and the second word ends with “-SIA”, whereas the applicant’s mark ends with “EE”. Taking into account my analysis of the marks’ overall impressions, I am of the view that the opponent’s word mark is visually similar to the applicant’s mark to a low degree.

53. The opponent’s figurative IR is visually similar to the applicant’s mark as the word “ELYSEE” which shares the same four initial letters as the dominant component of the opponent’s IR, namely “ELYSSIA”. The beginnings of words tend to have more visual and aural impact than the ends<sup>21</sup>, which, in my view, results in the visual difference created by the difference between the ending “-SIA” in the visually dominant word “ELYSSIA” and “-EE” in the word “ELYSEE” being slightly less significant. The competing marks also differ as the opponent’s figurative IR also contains 3D images of a bottle and its label, and the smaller word “Freixenet”. Bearing in mind my analysis

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<sup>20</sup> Case T-312/03

<sup>21</sup> See paragraph 81 of *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

of the marks' overall impressions, I am of the view that the opponent's figurative IR is visually similar to the applicant's mark to a low to medium degree.

#### Aural comparison

54. In its submissions in lieu, the opponent argues that the words "ELYSEE" and "ELYSSIA" are phonetically highly similar, as both start identically and end "with a strong S and a soft ending of vowels". In its counterstatement, the applicant argues that the competing marks are phonetically distinct from each other.

55. To the best of my knowledge, the word "FREIXENET" is Spanish in origin. However, it is my view that UK consumers will typically pronounce it as "FREX-EH-NET", in line with the English phonetic pronunciation of the letters. The opponent's two IRs will therefore be articulated as "FREX-EH-NET EH-LEE-SEE-AH". The applicant's mark "ELYSEE" will be articulated as "EH-LEE-SEE". The competing marks are aurally similar as the applicant's mark "ELYSEE" and the word "ELYSSIA" in the opponent's IRs begin with same first three syllables, namely "EH-LEE-SEE". The competing marks differ as the opponent's IRs also have the word "FREIXENET" and an additional syllable "AH" on the end of the word. I am of the view that the marks are aurally similar to a medium degree.

#### Conceptual comparison

56. In its submissions in lieu, the opponent submits that none of the words in the IR or the applicant's mark have a known meaning in the English language. In its counterstatement, the applicant argues that the competing marks are conceptually distinct from one another.

57. It is consistent with my understanding that none of the words in the opponent's IR or the applicant's mark are English words. As such, the average consumer will perceive both words "Freixenet" and "ELYSSIA" in the IR as neologisms coined by the opponent and will therefore not assign a meaning to either word. As such, the average consumer will not understand the two words together as conveying a unitary meaning, and instead will understand them as being independent of each other. The average consumer will also perceive "ELYSEE" in the applicant's mark as being a neologism coined by the applicant and will therefore also not assign a meaning to the mark. The

opponent's word IR and the applicant's mark are therefore conceptually neutral. However, in addition to the conceptually neutral words, the opponent's figurative IR contains the images of the 3D bottle, and therefore the figurative IR conveys the concept of a bottle. Insofar as the competing marks convey any concept, the opponent's figurative IR and the applicant's mark are dissimilar. However, the point of conceptual dissimilarity only arises from the use of non-distinctive bottle images, and therefore this dissimilar factor is of lesser significance.

### **Distinctive character of the earlier IRs**

58. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*<sup>22</sup>, 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).”

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<sup>22</sup> Case C-342/97

59. Registered trade marks possess various degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods, to those with high inherent distinctive character, such as invented words which have no allusive qualities.

60. Although the distinctiveness of a mark can be enhanced by virtue of the use made of it, the opponent has not filed any evidence of use. As such, I have only the inherent position to consider.

61. As stated previously, the two verbal elements “Freixenet” and “ELYSSIA” will both be understood by the average consumer as neologisms which are not allusive or descriptive of the goods. As such, I find that word ‘ELYSSIA’ of itself, and the opponent’s IRs in totality both have a high level of inherent distinctiveness. Although the figurative IR also contains 3D bottle images which are non-distinctive in relation to the goods, both of the verbal elements within the IR will carry a high level of distinctiveness.

### **Global assessment – conclusions on likelihood of confusion**

62. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods down to the responsible undertakings being the same or related. There is no set formula for establishing a likelihood of confusion between marks; it is a global assessment where a number of factors need to be borne in mind.

63. One such factor is the interdependency principle, i.e. a lesser degree of similarity between the competing marks may be offset by a greater degree of similarity between the respective goods/services, and vice versa. As mentioned above, it is necessary for me to keep in mind the distinctive character of the opponent’s mark, the average consumer for the goods and services, and the nature of the purchasing process. In doing so, I must be mindful that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

64. In its submissions in lieu, the opponent submits that “bearing in mind imperfect recollection ELYSEE and ELYSSIA must be deemed as highly similar”, and that the “addition of FREIXENET... is only sufficient to bring down the high level of similarity marginally”. In its counterstatement, the applicant argues that there is “no likelihood of confusion on the part of the relevant public, whether direct or indirect, nor is there any likelihood of association between the marks, even in respect of any overlapping goods or services”.

65. Earlier in this decision I found that the applicant’s goods and services range from being dissimilar to the opponent’s goods to being identical to the opponent’s goods. The average consumer of the goods and services will be the general public, although some may be trade customers too. The average consumer is likely to pay a medium amount of attention when purchasing the goods and services. I have found the opponent’s word IR to be visually similar to the applicant’s mark to a low degree, aurally similar to a medium degree, and conceptually neutral. The opponent’s figurative IR is visually similar to the applicant’s mark to a low to medium degree, aurally similar to a medium degree, and insofar as the marks convey any concept, they are conceptually dissimilar, although this is due to the use of non-distinctive images of 3D bottles. The earlier IRs have a high level of inherent distinctive character due to the verbal elements within it, including a high level of distinctiveness for the similar “ELYSSIA” element.

66. The overall impression lies solely in the word “ELYSEE” in the applicant’s mark. Both words play an equal and independent role in the overall impression of the opponent’s word IR. In the opponent’s figurative IR, the word “ELYSSIA” plays the greatest role within the overall impression of opponent’s IR. The addition of the distinctive word “FREIXENET” in both of the opponent’s IRs and also the figurative elements in the opponent’s figurative IR (such as the 3D bottles) constitute clear differences between the competing marks, and it is unlikely that the average consumer would overlook these additional elements. It is my view that these differences are likely to be sufficient to prevent the average consumer from mistaking the opponent’s IRs for the applicant’s mark (and vice versa) when paying a medium level of attention. I therefore find that there is no likelihood of direct confusion, even in respect of identical goods.

67. This leaves indirect confusion to be considered. In *L.A. Sugar Limited v By Back Beat Inc*<sup>23</sup>, Mr Iain Purvis Q.C., 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).”

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<sup>23</sup> BL O/375/10

68. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors*<sup>24</sup>, Arnold LJ approved Mr Purvis's formulation but added:

“13. As James Mellor QC sitting as the Appointed Person pointed out in *Cheeky Italian Ltd v Sutaria* (O/219/16) at [16] ‘a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion’. Mr Mellor went on to say that, if there is no likelihood of direct confusion, ‘one needs a reasonably special set of circumstances for a finding of a likelihood of indirect confusion’. I would prefer to say that there must be a proper basis for concluding that there is a likelihood of indirect confusion given that there is no likelihood of direct confusion

69. It is not sufficient that a mark merely calls to mind another mark (as per *Duebros Limited v Heirler Cenovis GmbH*<sup>25</sup>). This is mere association not indirect confusion. A finding of indirect confusion should not be made merely due to a shared element within marks.

70. I do not consider the immediate case to fit neatly into one of the categories set out in *L.A. Sugar* above. However, I remind myself that these are not exhaustive. I also consider the relevance of *Medion v Thomson*<sup>26</sup> and the subsequent case law. In *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another*<sup>27</sup>, Arnold J. (as he then was) considered the impact of the CJEU's judgment in *Bimbo*<sup>28</sup>, on the court's earlier judgment in *Medion*. The judge said:

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

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<sup>24</sup> [2021] EWCA Civ 1207

<sup>25</sup> BL O/547/17

<sup>26</sup> Case C-120/04

<sup>27</sup> [2015] EWHC 1271 (Ch)

<sup>28</sup> Case C-591/12P

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

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

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

71. I have previously found that in the opponent’s IRs, the word “ELYSSIA” (which is visually and aurally similar to the applicant’s mark “ELYSEE”) has its own conceptual independence from the first word “FREIXENET”, as it is my view that the average consumer of the goods would not interpret the two words “FREIXENET” and “ELYSSIA” as being a complete unit which has its own meaning separate from the meaning of the two constituent parts. The distinctive significance of “ELYSSIA” is therefore independent from the distinctive significance of the whole mark “FREIXENET ELYSSIA”. On this basis, the competing marks may be confused as a result of the distinctive and dominant verbal component “ELYSSIA” (which is highly distinctive and has an independent distinctive significance within the opponent’s IRs) being

misremembered by the average consumer as the applicant's mark "ELYSEE" (and vice versa) due to imperfect recollection. I am of the view that the similarity of these words (in line with paragraph 18 of *Whyte and Mackay Ltd* cited above) may lead the average consumer, when paying a medium level of attention, to believe there to be a commercial connection between the respective undertakings. On this basis, I find that there is a likelihood of indirect confusion, notwithstanding the differences between the competing marks. However, due to the interdependency principle and the fact that the two elements are similar rather than identical, I only find this to be the case for the applicant's goods and services which are similar to the opponent's goods to a slightly below-medium degree (not low) or higher. I therefore find a likelihood of indirect confusion for these goods and services.

72. Due to the interdependency principle and the level of similarity between the competing marks, I consider that where the degree of similarity between the goods and services is low or very low there is no likelihood of confusion. The opposition therefore fails in respect of these goods and services.

## **Conclusion**

73. The opposition under section 5(2)(b) has been particularly successful. Subject to any successful appeal, the application will be refused registration for the following goods and services:

*Class 32: Non-alcoholic beverages; non-alcoholic gin flavoured drinks, whether flavoured with extracts of gin, botanicals or gin flavourings; alcoholfree beverages; dealcoholised drinks; nonalcoholic drinks; carbonated non-alcoholic drinks; beverages; effervescing beverages.*<sup>29</sup>

*Class 33: Alcoholic beverages, except beers; spirits; distilled spirits; liqueurs; alcoholic carbonated beverages, except beer; ciders; sweet or hard cider; alcoholic fruit beverages; alcoholic energy drinks; alcoholic egg nog; edible alcoholic beverages; low alcoholic drinks; alcoholic cocktails containing milk;*

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<sup>29</sup> Some of these broad terms are refused because they cover non-alcoholic versions of the opponent's goods. The applicant may retain the other narrower terms applied for, which are covered by these terms, but which are not non-alcoholic equivalents of the opponent's goods. The same applies to those goods which are the subject of the services in class 35.

*alcoholic tea-based beverage; alcoholic fruit cocktail drinks; alcoholic coffee-based beverage; alcoholic beverages except beers; pre-mixed alcoholic beverages; alcoholic cocktails in the form of chilled gelatines; wines; low-alcoholic wine; red wines; rose wines; prepared wine cocktails; natural sparkling wines; mulled wines; white wines; rums; spiced rum; white rum; aged rum; dark rum; vodkas; vodka mixtures; mixed alcoholic drinks containing vodka; alcoholic beverages containing vodka; whiskeys; malt whisky; gin; flavoured gin; gin-based beverages; fruit-infused gins; cucumber-infused gin; sloe gin; grappas; tequilas; ports; kirsches; arracks; brandies; calvados; cachaças; alcopops; araks; aperitifs; anisette; sakes; sangrias; sherries; schnapps; vermouths; rice alcohols; brandies; scotch; bourbons; prepared alcoholic cocktails; alcoholic cordials; alcoholic punches; alcoholic bitters; alcoholic jellies; prepared alcoholic cocktails; alcoholic cocktail mixes; alcoholic aperitif bitters; alcoholic cordials containing vodka; alcoholic bitters containing vodka.*

Class 35: *Electronic and online shopping retail services in relation to drink products; online and offline retail, wholesale, import and export services relating to the sale of non-alcoholic gin flavoured drinks, whether flavoured with extracts of gin, botanicals or gin flavourings, dealcoholised drinks, nonalcoholic drinks, carbonated non-alcoholic drinks, alcoholfree beverages, [...], effervescing beverages, [...], beverages, non-alcoholic beverages, alcoholic beverages, except beers, spirits, distilled spirits, liqueurs, alcoholic carbonated beverages, except beer, ciders, sweet or hard cider, alcoholic fruit beverages, alcoholic energy drinks, alcoholic egg nog, edible alcoholic beverages, low alcoholic drinks, alcoholic cocktails containing milk, alcoholic tea-based beverage, alcoholic fruit cocktail drinks, alcoholic coffee-based beverage, alcoholic beverages except beers, pre-mixed alcoholic beverages, alcoholic cocktails in the form of chilled gelatines, wines, low-alcoholic wine, red wines, rose wines, prepared wine cocktails, natural sparkling wines, mulled wines, white wines, rums, spiced rum, white rum, aged rum, dark rum, vodkas, vodka mixtures, mixed alcoholic drinks containing vodka, alcoholic beverages containing vodka, whiskeys, malt whisky, gin, flavoured gin, gin-based beverages, fruit-infused gins, cucumber-infused gin, sloe gin, grappas, tequilas, ports, kirsches, arracks, brandies, calvados, cachaças, alcopops, araks, aperitifs, anisette, sakes,*

*sangrias, sherries, schnapps, vermouths, rice alcohols, brandies, scotch, bourbons, prepared alcoholic cocktails, alcoholic cordials, alcoholic punches, alcoholic bitters, alcoholic jellies, prepared alcoholic cocktails, alcoholic cocktail mixes, alcoholic aperitif bitters, alcoholic cordials containing vodka, alcoholic bitters containing vodka.*

74. The application may proceed to registration for the goods in class 29 and 30, and the various services relating to them in class 35 which were not opposed, as well as the following goods and services for which the opposition has failed:

*Class 32: Beers; lagers; stouts; ales; kvass; porters; malt beers; imitation beers; wheat beers; flavoured beers; root beers; black beers; beer worts; ginger ales; ginger beers; dry ginger ales; flavoured beers; beers for use as dieting or slimming aids; beer-based beverages; coffee-flavoured beers; low alcohol beers; beer-based cocktails; beers enriched with minerals; beers containing fruit and/or vegetable juices and/or milk; processed hops for use in making beers; beer and brewery products; hop extracts for manufacturing beer; non-alcoholic beers; de-alcoholised beers; non-alcoholic beer flavoured beverages; soft drinks; vegetable drinks; energy drinks; cola drinks; isotonic drinks; energy drinks containing caffeine; low-calorie soft drinks; sports drinks containing electrolytes; isotonic non-alcoholic drinks; beverages containing vitamins; tonic water; non-alcoholic beverages with tea flavour; non-alcoholic kvass; soya-based beverages, other than milk substitutes; honey-based beverages; tomato juice beverages; mineral water; mineral and aerated waters; fruit beverages and fruit juices; fruit juices; smoothies; fruit-based beverages; frozen fruit beverages; fruit squashes; fruit nectars; non-alcoholic fruit nectars; non-alcoholic fruit extracts; frozen fruit drinks; mixed fruit juice; nonalcoholic fruit drinks; fruit flavoured soft drinks; syrups for making fruit-flavoured drinks; concentrates for making fruit juices; ice fruit beverages; part-frozen slush drinks; fruit-flavoured carbonated drinks; non-alcoholic aloe vera drinks; sorbets [beverages]; sherbets [beverages]; squashes; red ginseng juice beverages; smoked plum beverages; pineapple juice beverages; grape juice beverages; orange juice beverages; apple juice beverages; syrups and other non-alcoholic preparations for making beverages; syrups for making soft drinks;*

*malt wort; non-alcoholic beverages containing malt; malt and malt extracts for making beverages; malt syrup for beverages; powders used in the preparation of fruit-based beverages; pastilles for effervescing beverages; powders for effervescing beverages; preparations for making beverages.*

*Class 33: alcoholic preparations for making beverages; alcoholic essences; alcoholic extracts; alcoholic fruit extracts; alcoholic extracts containing vodka.*

*Class 35: online and offline retail, wholesale, import and export services relating to the sale of beers, lagers, stouts, ales, kvass, porters, malt beers, imitation beers, wheat beers, flavoured beers, root beers, black beers, beer worts, ginger ales, ginger beers, dry ginger ales, flavoured beers, beers for use as dieting or slimming aids, beer-based beverages, coffee-flavoured beers, low alcohol beers, beer-based cocktails, beers enriched with minerals, beers containing fruit and/or vegetable juices and/or milk, processed hops for use in making beers, beer and brewery products, hop extracts for manufacturing beer, non-alcoholic beers, de-alcoholised beers, non-alcoholic beer flavoured beverages, soft drinks, vegetable drinks, energy drinks, cola drinks, isotonic drinks, energy drinks containing caffeine, low-calorie soft drinks, sports drinks containing electrolytes, isotonic non-alcoholic drinks, beverages containing vitamins, tonic water, non-alcoholic beverages with tea flavour, non-alcoholic kvass, soya-based beverages, other than milk substitutes, honey-based beverages, tomato juice beverages, mineral water, mineral and aerated waters, fruit beverages and fruit juices, fruit juices, smoothies, fruit-based beverages, frozen fruit beverages, fruit squashes, fruit nectars, non-alcoholic fruit nectars, nonalcoholic fruit extracts, frozen fruit drinks, mixed fruit juice, non-alcoholic fruit drinks, fruit flavoured soft drinks, syrups for making fruit-flavoured drinks, concentrates for making fruit juices, ice fruit beverages, part-frozen slush drinks, fruit-flavoured carbonated drinks, non-alcoholic aloe vera drinks, sorbets [beverages], sherbets [beverages], squashes, red ginseng juice beverages, smoked plum beverages, pineapple juice beverages, grape juice beverages, orange juice beverages, apple juice beverages, syrups and other non-alcoholic preparations for making beverages, syrups for making soft drinks, malt wort, non-alcoholic beverages containing malt, malt and malt extracts for*

*making beverages, malt syrup for beverages, powders used in the preparation of fruit-based beverages, pastilles for effervescing beverages, powders for effervescing beverages, preparations for making beverages, alcoholic preparations for making beverages, alcoholic essences, alcoholic extracts, alcoholic fruit extracts, alcoholic extracts containing vodka.*

75. As the parties have both achieved a measure of success, I find it appropriate that each party bears its own costs.

**Dated this 30<sup>th</sup> day of April 2026**

**K SERRAVALLE**

**For the Registrar**

### **Annex A**

Class 29: Meat, fish, poultry and game; meats; snacks consisting primarily of meat; turkey brawn; pork meat; pork loin; pork hock; pork ribs; pork legs; pork foot; pork knuckle; smoked pork; pork scratchings and pork crunch; sausage meat; sausages; frankfurters; lukanka; parizer sausages; salami products; salami based products; products made substantially or wholly of salami; hot dogs; bacon; bacon, bacon products, bacon extracts, snackfoods containing bacon or snack foods being bacon flavoured; bacon rashers; back bacon; bacon chops; bacon lardons; streaky bacon; ham; ham products; prepared ham; packaged ham; fresh ham; frozen ham; dried and preserved ham; sliced ham; ham pastes and pates; ham stocks and marrow for food; ham fillings for sandwiches; mortadella; ham joint; prosciutto; gammon; gammon steaks; gammon joints; whole gammon; wild boar; diced wild boar; wild boar haunch; wild boar mince; wild boar saddle; wild boar shoulder; lamb; whole lamb; rack of lamb; joints of lamb; lamb chop; lamb cutlets; lamb fillets; lamb saddle; lamb breast; stuffed lamb; lamb ribs; lamb burgers; lamb head; lamb leg; lamb steaks; lamb shoulder; diced lamb; strips of lamb; lamb mince; lamb offal; lamb shank; mutton; mutton leg; diced mutton; beef; beef meatballs; beef brisket; beef marrow stems; beef burgers; beef burger meat; beef steak; beef fillet; joints of beef; beef mince; beef ribs; beef dripping; beef offal; diced beef; chateaubriand; sliced

beef; beef fat; calf tongue; calf feet; ox; oxtail; ox cheeks; ox tongue; ox offal; veal; veal kidney; veal cheeks; veal fillets; joints of veal; veal feet; veal knuckle; cuts of veal; veal steaks; diced veal; veal chops; veal escalope; veal loin; veal breast; veal offal; rack of veal; venison; venison burger; diced venison; venison haunch; venison steaks; venison loins; venison mince; venison saddle; venison shank; venison shoulder; rein deer; bottled cooked meat; bullfrog meat; cabbage rolls stuffed with meat; canned cooked meat; canned meat; chicken; chicken meatballs; chicken drumsticks; chicken skin; chicken thighs; corn-fed chicken; chicken fillets; chicken strips; chicken legs; stuffed chicken; diced chicken; chicken mince; whole chicken; free range chicken; chicken crown; chicken feet; chicken wings; chicken offal; chicken oysters; sliced chicken; rooster; hens; baloney; cooked meat; cooked meat dishes; cooked meats; cured meats; donkey meat; dried meat; duck meat; duck; duck confit; duck breast; duck fat; duck legs; whole duck; duck offal; goose; goose breast; goose fat; goose leg; whole goose; grouse; guinea fowl; guinea fowl legs; whole guinea fowl; gizzard; game; ostrich; partridge; whole partridge; partridge legs; pheasant; whole pheasant; pheasant legs; pigeon; whole pigeon; pigeon breast; quail; rabbit; wild rabbit; rabbit offal; whole rabbit; rabbit tenderloin; rabbit saddle; rabbit legs; rabbit bones; hare; hare offal; whole hare; hare tenderloin; hare saddle; hare legs; hare bones; food pastes made from meat; freeze-dried meat; fresh meat; fried meat; frozen meals consisting primarily of meat; frozen meat; frozen meat products; galbi; ground meat; imitation crab meat; luncheon meats; prepared dishes consisting principally of meat; prepared meals consisting primarily of meat; prepared meals consisting primarily of meat substitutes; prepared meals made from meat; prepared meat; prepared meat dishes; preserved meat; processed meat; processed meat products; quenelles; ready cooked meals consisting primarily of meat; ready cooked meals consisting wholly or substantially wholly of meat; roast meat; salted meats; seitan; steaks of meat; meat-based snack foods; meatballs; tajine; tinned meats; turkey; turkey meat; turkey drumsticks; turkey skin; turkey thighs; turkey fillets; turkey strips; turkey legs; stuffed turkey; diced turkey; turkey mince; whole turkey; free range turkey; turkey crown; turkey feet; turkey wings; turkey breast; sliced turkey; sliced meat; smoked meats; crab meat; dried clam meat; dried razor clam meat; dried whelk meat; dried fish meat; flakes of dried fish meat; formed textured vegetable protein for use as a meat substitute; vegetable-based meat substitutes; meat extracts; extracts of ham; soups and stocks; ham based soups; preparations for making soups; vegetable soup preparations; mixes for making soup; soup powders; soup cubes; soup pastes; bacon flavourings; preserved, frozen, dried and cooked fruits and vegetables; dried apricots; dried figs; tinned ground chickpeas; pea preserves; kidney bean preserves; dried white beans; dried chickpeas; dried green beans; dried tomatoes; dried durum wheat grains; dried corn grains; dried beans; dried borlotti beans; raisins; snacks consisting primarily of vegetables; processed fruits and vegetables; tinned fruits; fruit desserts; snack foods and snack food products made of ham; ham flavoured potato chips; jellies, jams, compotes; spreads consisting mainly of fruits; fruit spread; vegetable margarine; quince jelly; rose petal jam; cranberry sauce; bitter orange marmalade; blueberry jam; apricot jam; peach jam; lemon jam; black cherry jam; strawpepper jam; blackberry jam; plum jam; rhubarb jam; chestnut jam; fruit jams; orange and ginger marmalade; strawberry

jam; raspberry jam; cranberry jam; marmalade; fruit marmalade; quince jam; compotes; eggs; egg substitutes; milk, cheese, butter, yogurt and other milk products; strained yoghurt; cream; whipped cream; cream cheese; cheese spreads; milks; milkshakes; soured milk; curdled milk; sour milk; flavoured milk; milk curds; milk beverages; milk drinks; soya milk; soybean milk; organic milk; cows' milk; sheep milk; goat milk; rice milk; powdered milk; milk solids; milk powder; almond milk; oat milk; dried milk; milk products; fermented milk; protein milk; albumin milk; skimmed milk; acidophilus milk; evaporated milk; milk-based beverages; dried milk powder; prostokvasha; milk beverages with high milk content; soya bean milk; coconut milk powder; coconut milk; powdered soya milk; powdered goat milk; milk powder for foodstuffs; milk powder for nutritional purposes; milk powder for food purposes; powdered milk for food purposes; flavoured milk powder for making drinks; condensed milk; milk substitutes; peanut milk; milk tea; kephir; kefir; fermented baked milk; flavoured milk beverages; kumys; kumiss; kumyss; koumiss; milk based dessert mousses; butters; buttermilk; butter cream; blended butter; concentrated butter; clarified butter; butter for use in cooking; butter preparations; butter oil; butter with herbs; butter for use in cooking; flavoured butters; brandy butters; softer butter; spreadable butter; cheese sticks; cheese bites; snack bites mainly based on cheese; dairy puddings; dessert sauces based on dairy products; powders for making milk based desserts, including soufflés and mousses; non-dairy whipped cream; oils and fats for food; corn oil; vegetable oil; nuts; Seasoned nuts; curry nuts; shelled nuts; assorted nuts; preserved nuts; edible nuts; spiced nuts; dried nuts; prepared nuts; ground nuts; processed nuts; roast nuts; roasted nuts; cashew nuts; nuts being dried; nuts being cooked; coated nuts; mixtures of fruit and nuts; chilli jam; edible seeds.

Class 30: Rice, pasta and noodles; rice; risotto; cooked rice; puffed rice; wholemeal rice; enriched rice; glutinous rice; instant rice; rice salad; sauces for rice; rice crisps; flour of rice; rice mixes; rice cakes; prepared rice dishes; rice cake snacks; uncooked artificial rice; natural rice flakes; edible rice paper; rice based dishes; foodstuffs made of rice; frozen prepared rice with seasonings; rice-based snack food; meals consisting primarily of rice; prepared meals containing rice; chocolate-coated rice cakes; rice-based prepared meals; snack food products made from rice flour; Chinese rice noodles; natural rice for food for human consumption; flour for making dumplings of glutinous rice; frozen meals consisting primarily of rice; extruded food products made of rice; breakfast cereals made of rice; dry and liquid ready-to-serve meals, mainly consisting of rice; rice puddings containing sultanas and nutmeg; boxed lunches consisting of rice, with added meat, fish or vegetables; pasta; alimentary pasta; dried pasta; fresh pasta; pasta for soups; dry and liquid ready-to-serve meals, mainly consisting of pasta; prepared pasta dishes; wholemeal pasta; filled pasta; pasta salad; pasta shells; pasta preserves; ready-made dishes containing pasta; sauces for pasta; vegetable-based seasonings for pasta; meals consisting primarily of pasta; cereals for use in making pasta; deep frozen pasta; dried pasta foods; pasta containing eggs; pasta containing fillings; pasta containing stuffings; pasta for incorporating into pizzas; pasta in the form of sheets; pasta products; prepared meals containing pasta; prepared pasta meals; sauces for use with pasta; snack foods consisting principally of pasta; stuffed pasta; canned pasta

foods; pasta dishes; Korean-style pasta soup; noodles; Asian noodles; bean-starch noodles; buckwheat noodles; Chinese noodles; uncooked Chinese noodles; Chinese rice noodles; chow mein noodles; dried and fresh pastas, noodles and dumplings; dried noodles; egg noodles; fried noodles; instant Chinese noodles; instant cooking noodles; instant noodles; instant soba noodles; instant udon noodles; lo mein; pad Thai; ramen noodles; rice noodles; shrimp noodles; soba noodles; somen noodles; starch noodles; stir-fried noodles with vegetables; udon; udon noodles; vermicelli; wholemeal noodles; pre-packaged lunches consisting primarily of rice, and also including meat, fish or vegetables; tapioca and sago; flour and preparations made from cereals; farina; mixed flour for food; enriched farina; vegetable flour; farinaceous foods; flour of oats; cereal flour; flour mixes; corn flour; pizza flour; cake flour; kasha; wheat starch flour; flour ready for baking; toasted grain flour; dough flour; rye flour; wheat flour; barley meal; corn flour; flour based savory snacks; wheat flour; flour confectionery; unsorted wheatflour; flour mixtures for use in baking; hominy; oatmeal for human consumption; groats for human food; bread, pastries and confectionery; hog dog sandwiches; bread; bread and buns; bread and pastry; dough bases; bread crumb; bread crumbs; bread doughs; bread flavored with spices; bread flavoured with spices; bread made with soya beans; bread mixes; bread rolls; bread sticks; bread with soy bean; bread with sweet red bean; bialys; biscuits and bread; corn bread; crisp bread; flat bread; part baked frozen breads; frozen dough for use as pizza, bread or other bread-type products; frozen foods, namely, grain and bread based appetizers, hors d'oeuvres, and canapés; fruit breads; garlic bread; low-salt bread; mixes for making breading; multigrain bread; naan bread; panetonne; pita bread; pizza cheese sticks consisting predominantly of pizza; potato filled rolls; protein reduced and gluten free flour and bread; rolls; rye bread; sandwich wraps; wrap bread; stuffing mixes containing bread; unleavened bread; whole wheat bread; wholemeal bread; chocolate; chocolate spreads; chocolate truffles; chocolate sweets; chocolate brownies; chocolate biscuits; imitation chocolate; dairy chocolate; chocolate eggs; chocolate confectionary; milk chocolate; filled chocolates; chocolate candies; chocolate confections; chocolate bunnies; chocolate cakes; chocolate pastes; chocolate creams; chocolate shells; chocolate substitutes; chocolate bars; milk chocolates; chocolate covered cakes; chocolate covered biscuits; milk chocolate bars; chocolate-based spreads; chocolate confectionery products; filled chocolate bars; dairy-free chocolate; chocolate based products; chocolate decorations for cakes; chocolate spreads containing nuts; chocolate candy with fillings; chocolate-coated sugar confectionery; chocolate fillings for bakery products; ice cream, sorbets and other edible ices; sugar, honey, treacle; sugar; raw sugar; cube sugar; palm sugar; brown sugar; fruit sugar; grape sugar; icing sugar; white sugar; boiled sugar; castor sugar; invert sugar; liquid sugar; powdered sugar; turbinado sugar; granulated sugar; sugarfree sweets; sugarless sweets; caramelised sugar; sugar substitutes; foodstuffs made of sugar for making a dessert; foodstuffs made of sugar for sweetening desserts; sugar for making jellies; sugar for making jams; icing sugar; honey; herbal honey; honeys; manuka honey; natural honey; honey substitutes; truffle honey; helichrysum honey; natural ripe honey; sweet spreads; breakfast cereals containing honey; herbal honey lozenges; honey glazes for ham; invert sugar cream; breakfast cereals flavoured with honey;

biological honey for human consumption; candies with honey; sweets being honey based; yuja-cha; yeasts; baking-powders; yeast extracts for human consumption; leavening agents; yeast powder; yeast extracts for human consumption; beer yeast; yeast for making food; yeast cultures for making beverages; salt, seasonings, spices, preserved herbs; salts; cooking salt; salt and brine for preserving foodstuffs; salt for pickling foodstuffs; salt preservatives for animal feeds; sea salt and rock salt for cooking; flavoured salt for food; spiced salt; table salt; spices; cumin seeds; fennel seeds; anise; cassia bark,; cassia powder; cassia quills; parsley; coriander leaves; curry leaves; sage; sage powder; marjoram; cumin powder; coriander powder; turmeric powder; fennel powder; beetroot powder; lemon grass; lemon grass powder; fenugreek powder; fenugreek leaves; star anise powder; ajwain seeds; carom seeds; oregano; parsley; juniper berries, juniper berry powder; nutmeg whole; nutmeg powder; mace whole; mace powder; smoked paprika powder; whole chillies; bird's eye chillies; cayenne powder; ginger powder; cardamom powder; cardamom green whole; cardamom black whole; garlic powder; galangal powder; liquorice root powder; liquorice root sticks; arrowroot powder; yeast powder; fennel seed powder; nigella seeds; poppy seeds; yellow mustard seeds; black mustard seeds; brown mustard seeds; chia seeds; pumpkin seeds; fenugreek seeds; linseeds, flaxseeds; black sesame seeds; white sesame seeds; coriander seeds; cumin seeds; mace blades; white peppercorn; black peppercorns; whole cloves; clove powder; galangal whole; dried rosemary; dried thyme; dried spearmint; mixed herbs; basil; basil seeds; bay leaves; chives; curry leaves; fenugreek seeds; allspice; aniseed; aniseeds for use as a seasoning; aromatic preparations for food; cumin seeds; fennel seeds; anise; cassia bark; cassia powder; cassia quills; parsley; coriander leaves; curry leaves; sage; sage powder; marjoram; cumin powder; coriander powder; turmeric powder; fennel powder; beetroot powder; lemon grass; lemon grass powder; fenugreek powder; fenugreek leaves; star anise powder; ajwain seeds; carom seeds; oregano; parsley; juniper berries, juniper berry powder; nutmeg whole; nutmeg powder; mace whole; mace powder; smoked paprika powder; whole chillies; bird's eye chillies; cayenne powder; ginger powder; cardamom powder; cardamom green whole; cardamom black whole; garlic powder; galangal powder; liquorice root powder; liquorice root sticks; arrowroot powder; yeast powder; fennel seed powder; nigella seeds; poppy seeds; yellow mustard seeds; black mustard seeds; brown mustard seeds; chia seeds; pumpkin seeds; fenugreek seeds; linseeds, flaxseeds; black sesame seeds; white sesame seeds; coriander seeds; cumin seeds; mace blades; white peppercorn; black peppercorns; whole cloves; clove powder; galangal whole; dried rosemary; dried thyme; dried spearmint; mixed herbs; basil; basil seeds; bay leaves; chives; curry leaves; fenugreek seeds; allspice; aniseed; aniseeds for use as a seasoning; aromatic preparations for food; spices in the form of powders; baking spices; curry spices; edible spices; mixed spices; spice mixes; spice rubs; spiced salt; Himalayan Salt; curry spice mixes; mixed spice powder; seasoning marinade; seasoning mixes; seasoning mixes for stews; seasonings; blends of seasonings; chili seasonings; dried chillies; chilli sauces; chilli powders; chilli infused honey; dry seasonings; flavourings and seasonings; food seasonings; vinegar, sauces and other condiments; vinegars; vinegar-based drink; wine vinegar; balsamic vinegar; traditional balsamic vinegar from Modena; balsamic vinegar flavoured with

fruits, spices or herbs; cider vinegar; condiments made from balsamic vinegar; condiments based on balsamic vinegar flavoured with fruits, spices or herbs; beer vinegars; fruit vinegars; flavoured vinegars; pepper vinegars; mustard vinegars; coated nuts; sauces; salad sauces; soya sauces; soy sauce; canned sauces; pepper sauces; cooking sauces; tomato sauces; sauce powders; hot sauces; curry sauces; fish sauces; mushroom sauces; shrimp sauces; alfredo sauces; teriyaki sauces; pizza sauces; picante sauces; concentrated sauces; pesto sauces; barbecue sauces; satay sauces; savory sauces; Worcestershire sauces; ketchup; kebab sauces; taco sauces; chocolate sauces; brown sauces; cheese sauces; spicy sauces; horseradish sauces; horseradish sauce; fruit sauces; sauce powders; spaghetti sauces; savoury sauces; sauce mixes; herb sauces; basting sauces; chocolate sauces; tartare sauces; tartar sauces; artichoke sauces; salsa sauces; oyster sauces; remoulade sauces; peanut sauces; sambal sauces; ready-made sauces; food dressings; sauces for rice; sauces for chicken; truffle cream sauces; mayonnaise-based sauces; sweet and sour sauces; sriracha hot chili sauces; mixes for preparing sauces; hot chili pepper sauces; sauces for barbecued meat; preparations for making sauces; savory sauces, chutneys and pastes; savory sauces used as condiments; preparations for making up into sauces; sambal oelek (ground red pepper sauce); flavourings in the form of dehydrated sauces; flavourings in the form of concentrated sauces; prepared foodstuffs in the form of sauces; ice; yellow rice.

Class 32: Beers; lagers; stouts; ales; kvass; porters; malt beers; imitation beers; wheat beers; flavoured beers; root beers; black beers; beer worts; ginger ales; ginger beers; dry ginger ales; flavoured beers; beers for use as dieting or slimming aids; beer-based beverages; coffee-flavoured beers; low alcohol beers; beer-based cocktails; beers enriched with minerals; beers containing fruit and/or vegetable juices and/or milk; processed hops for use in making beers; beer and brewery products; hop extracts for manufacturing beer; beverages; non-alcoholic beverages; non-alcoholic beers; de-alcoholised beers; non-alcoholic beer flavoured beverages; non-alcoholic gin flavoured drinks, whether flavoured with extracts of gin, botanicals or gin flavourings; soft drinks; vegetable drinks; energy drinks; cola drinks; isotonic drinks; de-alcoholised drinks; energy drinks containing caffeine; low-calorie soft drinks; non-alcoholic drinks; carbonated non-alcoholic drinks; sports drinks containing electrolytes; isotonic non-alcoholic drinks; beverages containing vitamins; alcohol-free beverages; tonic water; effervescing beverages; non-alcoholic beverages with tea flavour; non-alcoholic kvass; soya-based beverages, other than milk substitutes; honey-based beverages; tomato juice beverages; mineral water; mineral and aerated waters; fruit beverages and fruit juices; fruit juices; smoothies; fruit-based beverages; frozen fruit beverages; fruit squashes; fruit nectars; non-alcoholic fruit nectars; non-alcoholic fruit extracts; frozen fruit drinks; mixed fruit juice; non-alcoholic fruit drinks; fruit flavoured soft drinks; syrups for making fruit-flavoured drinks; concentrates for making fruit juices; ice fruit beverages; part-frozen slush drinks; fruit-flavoured carbonated drinks; non-alcoholic aloe vera drinks; sorbets [beverages]; sherbets [beverages]; squashes; red ginseng juice beverages; smoked plum beverages; pineapple juice beverages; grape juice beverages; orange juice beverages; apple juice beverages; syrups and other non-alcoholic preparations for

making beverages; syrups for making soft drinks; malt wort; non-alcoholic beverages containing malt ; malt and malt extracts for making beverages. malt syrup for beverages; powders used in the preparation of fruit-based beverages; pastilles for effervescing beverages; powders for effervescing beverages; preparations for making beverages.

Class 33: Alcoholic beverages, except beers; spirits; distilled spirits; liqueurs; alcoholic carbonated beverages, except beer; ciders; sweet or hard cider; alcoholic fruit beverages; alcoholic energy drinks; alcoholic egg nog; edible alcoholic beverages; low alcoholic drinks; alcoholic cocktails containing milk; alcoholic tea-based beverage; alcoholic fruit cocktail drinks; alcoholic coffee-based beverage; alcoholic beverages except beers; pre-mixed alcoholic beverages; alcoholic cocktails in the form of chilled gelatines; wines; low-alcoholic wine; red wines; rose wines; prepared wine cocktails; natural sparkling wines; mulled wines; white wines; rums; spiced rum; white rum; aged rum; dark rum; vodkas; vodka mixtures; mixed alcoholic drinks containing vodka; alcoholic beverages containing vodka; whiskeys; malt whisky; gin; flavoured gin; gin-based beverages; fruit-infused gins; cucumber-infused gin; sloe gin; grappas; tequilas; ports; kirsches; arracks; brandies; calvados; cachaças; alcopops; araks; aperitifs; anisette; sakes; sangrias; sherries; schnapps; vermouths; rice alcohols; brandies; scotch; bourbons; prepared alcoholic cocktails; alcoholic preparations for making beverages; alcoholic essences; alcoholic cordials; alcoholic punches; alcoholic bitters; alcoholic jellies; alcoholic extracts; prepared alcoholic cocktails; alcoholic fruit extracts; alcoholic cocktail mixes; alcoholic aperitif bitters; alcoholic cordials containing vodka; alcoholic extracts containing vodka; alcoholic bitters containing vodka.

Class 35: Advertising; advertising services; promotional services; promotional marketing; marketing services; production of advertising matter; advertising via the internet; arranging and conducting of promotional events; arranging of product launches; compilation, production and dissemination of advertising matter; distribution of advertising, marketing and promotional material; electronic billboard advertising; event marketing; magazine advertising; product launches; product demonstrations and product display services; online ordering services; electronic and online shopping retail services in relation to drink products; online and offline retail, wholesale, import and export services relating to the sale of meat, fish, poultry and game, meats, snacks consisting primarily of meat, turkey brawn, pork meat, pork loin, pork hock, pork ribs, pork legs, pork foot, pork knuckle, smoked pork, pork scratchings and pork crunch, sausage meat, sausages, frankfurters, lukanka, parizer sausages, salami products, salami based products, products made substantially or wholly of salami, hot dogs, bacon, bacon, bacon products, bacon extracts, snackfoods containing bacon or snack foods being bacon flavoured, bacon rashers, back bacon, bacon chops, bacon lardons, streaky bacon, ham, ham products, prepared ham, packaged ham, fresh ham, frozen ham, dried and preserved ham, sliced ham, ham pastes and pates, ham stocks and marrow for food, ham fillings for sandwiches, mortadella, ham joint, prosciutto, gammon, gammon steaks, gammon joints, whole gammon, wild boar, diced wild boar, wild boar haunch, wild boar mince, wild boar saddle, wild boar shoulder, lamb, whole lamb, rack of lamb, joints of lamb,

lamb chop, lamb cutlets, lamb fillets, lamb saddle, lamb breast, stuffed lamb, lamb ribs, lamb burgers, lamb head, lamb leg, lamb steaks, lamb shoulder, diced lamb, strips of lamb, lamb mince, lamb offal, lamb shank, mutton, mutton leg, diced mutton, beef, beef meatballs, beef brisket, beef marrow stems, beef burgers, beef burger meat, beef steak, beef fillet, joints of beef, beef mince, beef ribs, beef dripping, beef offal, diced beef, chateaubriand, sliced beef, beef fat, calf tongue, calf feet, ox, oxtail, ox cheeks, ox tongue, ox offal, veal, veal kidney, veal cheeks, veal fillets, joints of veal, veal feet, veal knuckle, cuts of veal, veal steaks, diced veal, veal chops, veal escalope, veal loin, veal breast, veal offal, rack of veal, venison, venison burger, diced venison, venison haunch, venison steaks, venison loins, venison mince, venison saddle, venison shank, venison shoulder, rein deer, bottled cooked meat, bullfrog meat, cabbage rolls stuffed with meat, canned cooked meat, canned meat, chicken, chicken meatballs, chicken drumsticks, chicken skin, chicken thighs, corn-fed chicken, chicken fillets, chicken strips, chicken legs, stuffed chicken, diced chicken, chicken mince, whole chicken, free range chicken, chicken crown, chicken feet, chicken wings, chicken offal, chicken oysters, sliced chicken, rooster, hens, baloney, cooked meat, cooked meat dishes, cooked meats, cured meats, donkey meat, dried meat, duck meat, duck, duck confit, duck breast, duck fat, duck legs, whole duck, duck offal, goose, goose breast, goose fat, goose leg, whole goose, grouse, guinea fowl, guinea fowl legs, whole guinea fowl, gizzard, game, ostrich, partridge, whole partridge, partridge legs, pheasant, whole pheasant, pheasant legs, pigeon, whole pigeon, pigeon breast, quail, rabbit, wild rabbit, rabbit offal, whole rabbit, rabbit tenderloin, rabbit saddle, rabbit legs, rabbit bones, hare, hare offal, whole hare, hare tenderloin, hare saddle, hare legs, hare bones, food pastes made from meat, freeze-dried meat, fresh meat, fried meat, frozen meals consisting primarily of meat, frozen meat, frozen meat products, galbi, ground meat, imitation crab meat, luncheon meats, prepared dishes consisting principally of meat, prepared meals consisting primarily of meat, prepared meals consisting primarily of meat substitutes, prepared meals made from meat, prepared meat, prepared meat dishes, preserved meat, processed meat, processed meat products, quenelles, ready cooked meals consisting primarily of meat, ready cooked meals consisting wholly or substantially wholly of meat, roast meat, salted meats, seitan, steaks of meat, meat-based snack foods, meatballs, tajine, tinned meats, turkey, turkey meat, turkey drumsticks, turkey skin, turkey thighs, turkey fillets, turkey strips, turkey legs, stuffed turkey, diced turkey, turkey mince, whole turkey, free range turkey, turkey crown, turkey feet, turkey wings, turkey breast, sliced turkey, sliced meat, smoked meats, crab meat, dried clam meat, dried razor clam meat, dried whelk meat, dried fish meat, flakes of dried fish meat, formed textured vegetable protein for use as a meat substitute, vegetable-based meat substitutes, meat extracts, extracts of ham, soups and stocks, ham based soups, preparations for making soups, vegetable soup preparations, mixes for making soup, soup powders, soup cubes, soup pastes, bacon flavourings, preserved, frozen, dried and cooked fruits and vegetables, dried apricots, dried figs, tinned ground chickpeas, pea preserves, kidney bean preserves, dried white beans, dried chickpeas, dried green beans, dried tomatoes, dried durum wheat grains, dried corn grains, dried beans, dried borlotti beans, raisins, snacks consisting primarily of vegetables, processed fruits and vegetables, tinned fruits, fruit

desserts, snack foods and snack food products made of ham, ham flavoured potato chips, jellies, jams, compotes, spreads consisting mainly of fruits, fruit spread, vegetable margarine, quince jelly, rose petal jam, cranberry sauce, bitter orange marmalade, blueberry jam, apricot jam, peach jam, lemon jam, black cherry jam, strawpepper jam, blackberry jam, plum jam, rhubarb jam, chestnut jam, fruit jams, orange and ginger marmalade, strawberry jam, raspberry jam, cranberry jam, marmalade, fruit marmalade, quince jam, compotes, eggs, egg substitutes, milk, cheese, butter, yogurt and other milk products, strained yoghurt, cream, whipped cream, cream cheese, cheese spreads, milks, milkshakes, soured milk, curdled milk, sour milk, flavoured milk, milk curds, milk beverages, milk drinks, soya milk, soybean milk, organic milk, cows' milk, sheep milk, goat milk, rice milk, powdered milk, milk solids, milk powder, almond milk, oat milk, dried milk, milk products, fermented milk, protein milk, albumin milk, skimmed milk, acidophilus milk, evaporated milk, milk-based beverages, dried milk powder, prostokvasha, milk beverages with high milk content, soya bean milk, coconut milk powder, coconut milk, powdered soya milk, powdered goat milk, milk powder for foodstuffs, milk powder for nutritional purposes, milk powder for food purposes, powdered milk for food purposes, flavoured milk powder for making drinks, condensed milk, milk substitutes, peanut milk, milk tea, kephir, kefir, fermented baked milk, flavoured milk beverages, kumys, kumiss, kumyss, koumiss, milk based dessert mousses, butters, buttermilk, butter cream, blended butter, concentrated butter, clarified butter, butter for use in cooking, butter preparations, butter oil, butter with herbs, butter for use in cooking, flavoured butters, brandy butters, softer butter, spreadable butter, cheese sticks, cheese bites, snack bites mainly based on cheese, dairy puddings, dessert sauces based on dairy products, powders for making milk based desserts, including soufflés and mousses, non-dairy whipped cream, oils and fats for food, corn oil, vegetable oil, nuts, seasoned nuts, curry nuts, shelled nuts, assorted nuts, preserved nuts, edible nuts, spiced nuts, dried nuts, prepared nuts, ground nuts, processed nuts, roast nuts, roasted nuts, cashew nuts, nuts being dried, nuts being cooked, coated nuts, mixtures of fruit and nuts, chilli jam, edible seeds, rice, pasta and noodles, rice, risotto, cooked rice, puffed rice, wholemeal rice, enriched rice, glutinous rice, instant rice, rice salad, sauces for rice, rice crisps, flour of rice, rice mixes, rice cakes, prepared rice dishes, rice cake snacks, uncooked artificial rice, natural rice flakes, edible rice paper, rice based dishes, foodstuffs made of rice, frozen prepared rice with seasonings, rice-based snack food, meals consisting primarily of rice, prepared meals containing rice, chocolate-coated rice cakes, rice-based prepared meals, snack food products made from rice flour, chinese rice noodles, natural rice for food for human consumption, flour for making dumplings of glutinous rice, frozen meals consisting primarily of rice, extruded food products made of rice, breakfast cereals made of rice, dry and liquid ready-to-serve meals, mainly consisting of rice, rice puddings containing sultanas and nutmeg, boxed lunches consisting of rice, with added meat, fish or vegetables, pasta, alimentary pasta, dried pasta, fresh pasta, pasta for soups, dry and liquid ready-to-serve meals, mainly consisting of pasta, prepared pasta dishes, wholemeal pasta, filled pasta, pasta salad, pasta shells, pasta preserves, ready-made dishes containing pasta, sauces for pasta, vegetable-based seasonings for pasta, meals consisting primarily of pasta, cereals for use in

making pasta, deep frozen pasta, dried pasta foods, pasta containing eggs, pasta containing fillings, pasta containing stuffings, pasta for incorporating into pizzas, pasta in the form of sheets, pasta products, prepared meals containing pasta, prepared pasta meals, sauces for use with pasta, snack foods consisting principally of pasta, stuffed pasta, canned pasta foods, pasta dishes, korean-style pasta soup, noodles, asian noodles, bean-starch noodles, buckwheat noodles, chinese noodles, uncooked chinese noodles, chinese rice noodles, chow mein noodles, dried and fresh pastas, noodles and dumplings, dried noodles, egg noodles, fried noodles, instant chinese noodles, instant cooking noodles, instant noodles, instant soba noodles, instant udon noodles, lo mein, pad thai, ramen noodles, rice noodles, shrimp noodles, soba noodles, somen noodles, starch noodles, stir-fried noodles with vegetables, udon, udon noodles, vermicelli, wholemeal noodles, pre-packaged lunches consisting primarily of rice, and also including meat, fish or vegetables, tapioca and sago, flour and preparations made from cereals, farina, mixed flour for food, enriched farina, vegetable flour, farinaceous foods, flour of oats, cereal flour, flour mixes, corn flour, pizza flour, cake flour, kasha, wheat starch flour, flour ready for baking, toasted grain flour, dough flour, rye flour, wheat flour, barley meal, corn flour, flour based savory snacks, wheat flour, flour confectionery, unsorted wheatflour, flour mixtures for use in baking, hominy, oatmeal for human consumption, groats for human food, bread, pastries and confectionery, hog dog sandwiches, bread, bread and buns, bread and pastry, dough bases, bread crumb, bread crumbs, bread doughs, bread flavored with spices, bread flavoured with spices, bread made with soya beans, bread mixes, bread rolls, bread sticks, bread with soy bean, bread with sweet red bean, bialys, biscuits and bread, corn bread, crisp bread, flat bread, part baked frozen breads, frozen dough for use as pizza, bread or other bread-type products, frozen foods, namely, grain and bread based appetizers, hors d'oeuvres, and canapés, fruit breads, garlic bread, low-salt bread, mixes for making breading, multigrain bread, naan bread, panetonne, pita bread, pizza cheese sticks consisting predominantly of pizza, potato filled rolls, protein reduced and gluten free flour and bread, rolls, rye bread, sandwich wraps, wrap bread, stuffing mixes containing bread, unleavened bread, whole wheat bread, wholemeal bread, chocolate, chocolate spreads, chocolate truffles, chocolate sweets, chocolate brownies, chocolate biscuits, imitation chocolate, dairy chocolate, chocolate eggs, chocolate confectionary, milk chocolate, filled chocolates, chocolate candies, chocolate confections, chocolate bunnies, chocolate cakes, chocolate pastes, chocolate creams, chocolate shells, chocolate substitutes, chocolate bars, milk chocolates, chocolate covered cakes, chocolate covered biscuits, milk chocolate bars, chocolate-based spreads, chocolate confectionery products, filled chocolate bars, dairy-free chocolate, chocolate based products, chocolate decorations for cakes, chocolate spreads containing nuts, chocolate candy with fillings, chocolate-coated sugar confectionery, chocolate fillings for bakery products, ice cream, sorbets and other edible ices, sugar, honey, treacle, sugar, raw sugar, cube sugar, palm sugar, brown sugar, fruit sugar, grape sugar, icing sugar, white sugar, boiled sugar, castor sugar, invert sugar, liquid sugar, powdered sugar, turbinado sugar, granulated sugar, sugarfree sweets, sugarless sweets, caramelised sugar, sugar substitutes, foodstuffs made of sugar for making a dessert, foodstuffs made of sugar for sweetening

desserts, sugar for making jellies, sugar for making jams, icing sugar, honey, herbal honey, honeys, manuka honey, natural honey, honey substitutes, truffle honey, helichrysum honey, natural ripe honey, sweet spreads, breakfast cereals containing honey, herbal honey lozenges, honey glazes for ham, invert sugar cream, breakfast cereals flavoured with honey, biological honey for human consumption, candies with honey, sweets being honey based, yuja-cha, yeasts, baking-powders, yeast extracts for human consumption, leavening agents, yeast powder, yeast extracts for human consumption, beer yeast, yeast for making food, yeast cultures for making beverages, salt, seasonings, spices, preserved herbs, salts, cooking salt, salt and brine for preserving foodstuffs, salt for pickling foodstuffs, salt preservatives for animal feeds, sea salt and rock salt for cooking, flavoured salt for food, spiced salt, table salt, spices, cumin seeds, fennel seeds, anise, cassia bark,, cassia powder, cassia quills, parsley, coriander leaves, curry leaves, sage, sage powder, marjoram, cumin powder, coriander powder, turmeric powder, fennel powder, beetroot powder, lemon grass, lemon grass powder, fenugreek powder, fenugreek leaves, star anise powder, ajwain seeds, carom seeds, oregano, parsley, juniper berries, juniper berry powder, nutmeg whole, nutmeg powder, mace whole, mace powder, smoked paprika powder, whole chillies, bird's eye chillies, cayenne powder, ginger powder, cardamom powder, cardamom green whole, cardamom black whole, garlic powder, galangal powder, liquorice root powder, liquorice root sticks, arrowroot powder, yeast powder, fennel seed powder, nigella seeds, poppy seeds, yellow mustard seeds, black mustard seeds, brown mustard seeds, chia seeds, pumpkin seeds, fenugreek seeds, linseeds, flaxseeds, black sesame seeds, white sesame seeds, coriander seeds, cumin seeds, mace blades, white peppercorn, black peppercorns, whole cloves, clove powder, galangal whole, dried rosemary, dried thyme, dried spearmint, mixed herbs, basil, basil seeds, bay leaves, chives, curry leaves, fenugreek seeds, allspice, aniseed, aniseeds for use as a seasoning, aromatic preparations for food, cumin seeds, fennel seeds, anise, cassia bark, cassia powder, cassia quills, parsley, coriander leaves, curry leaves, sage, sage powder, marjoram, cumin powder, coriander powder, turmeric powder, fennel powder, beetroot powder, lemon grass, lemon grass powder, fenugreek powder, fenugreek leaves, star anise powder, ajwain seeds, carom seeds, oregano, parsley, juniper berries, juniper berry powder, nutmeg whole, nutmeg powder, mace whole, mace powder, smoked paprika powder, whole chillies, bird's eye chillies, cayenne powder, ginger powder, cardamom powder, cardamom green whole, cardamom black whole, garlic powder, galangal powder, liquorice root powder, liquorice root sticks, arrowroot powder, yeast powder, fennel seed powder, nigella seeds, poppy seeds, yellow mustard seeds, black mustard seeds, brown mustard seeds, chia seeds, pumpkin seeds, fenugreek seeds, linseeds, flaxseeds, black sesame seeds, white sesame seeds, coriander seeds, cumin seeds, mace blades, white peppercorn, black peppercorns, whole cloves, clove powder, galangal whole, dried rosemary, dried thyme, dried spearmint, mixed herbs, basil, basil seeds, bay leaves, chives, curry leaves, fenugreek seeds, allspice, aniseed, aniseeds for use as a seasoning, aromatic preparations for food, spices in the form of powders, baking spices, curry spices, edible spices, mixed spices, spice mixes, spice rubs, spiced salt, himalayan salt, curry spice mixes, mixed spice powder, seasoning marinade, seasoning mixes, seasoning mixes for stews,

seasonings, blends of seasonings, chili seasonings, dried chillies, chilli sauces, chilli powders, chilli infused honey, dry seasonings, flavourings and seasonings, food seasonings, vinegar, sauces and other condiments, vinegars, vinegar-based drink, wine vinegar, balsamic vinegar, traditional balsamic vinegar from modena, balsamic vinegar flavoured with fruits, spices or herbs, cider vinegar, condiments made from balsamic vinegar, condiments based on balsamic vinegar flavoured with fruits, spices or herbs, beer vinegars, fruit vinegars, flavoured vinegars, pepper vinegars, mustard vinegars, coated nuts, sauces, salad sauces, soya sauces, soy sauce, canned sauces, pepper sauces, cooking sauces, tomato sauces, sauce powders, hot sauces, curry sauces, fish sauces, mushroom sauces, shrimp sauces, alfredo sauces, teriyaki sauces, pizza sauces, picante sauces, concentrated sauces, pesto sauces, barbecue sauces, satay sauces, savory sauces, worcestershire sauces, ketchup, kebab sauces, taco sauces, chocolate sauces, brown sauces, cheese sauces, spicy sauces, horseradish sauces, horseradish sauce, fruit sauces, sauce powders, spaghetti sauces, savoury sauces, sauce mixes, herb sauces, basting sauces, chocolate sauces, tartare sauces, tartar sauces, artichoke sauces, salsa sauces, oyster sauces, remoulade sauces, peanut sauces, sambal sauces, ready-made sauces, food dressings, sauces for rice, sauces for chicken, truffle cream sauces, mayonnaise-based sauces, sweet and sour sauces, sriracha hot chili sauces, mixes for preparing sauces, hot chili pepper sauces, sauces for barbecued meat, preparations for making sauces, savory sauces, chutneys and pastes, savory sauces used as condiments, preparations for making up into sauces, sambal oelek (ground red pepper sauce), flavourings in the form of dehydrated sauces, flavourings in the form of concentrated sauces, prepared foodstuffs in the form of sauces, ice, yellow rice, beers, lagers, stouts, ales, kvass, porters, malt beers, imitation beers, wheat beers, flavoured beers, root beers, black beers, beer worts, ginger ales, ginger beers, dry ginger ales, flavoured beers, beers for use as dieting or slimming aids, beer-based beverages, coffee-flavoured beers, low alcohol beers, beer-based cocktails, beers enriched with minerals, beers containing fruit and/or vegetable juices and/or milk, processed hops for use in making beers, beer and brewery products, hop extracts for manufacturing beer, beverages, non-alcoholic beverages, non-alcoholic beers, de-alcoholised beers, non-alcoholic beer flavoured beverages, non-alcoholic gin flavoured drinks, whether flavoured with extracts of gin, botanicals or gin flavourings, soft drinks, vegetable drinks, energy drinks, cola drinks, isotonic drinks, de-alcoholised drinks, energy drinks containing caffeine, low-calorie soft drinks, non-alcoholic drinks, carbonated non-alcoholic drinks, sports drinks containing electrolytes, isotonic non-alcoholic drinks, beverages containing vitamins, alcohol-free beverages, tonic water, effervescing beverages, non-alcoholic beverages with tea flavour, non-alcoholic kvass, soya-based beverages, other than milk substitutes, honey-based beverages, tomato juice beverages, mineral water, mineral and aerated waters, fruit beverages and fruit juices, fruit juices, smoothies, fruit-based beverages, frozen fruit beverages, fruit squashes, fruit nectars, non-alcoholic fruit nectars, non-alcoholic fruit extracts, frozen fruit drinks, mixed fruit juice, non-alcoholic fruit drinks, fruit flavoured soft drinks, syrups for making fruit-flavoured drinks, concentrates for making fruit juices, ice fruit beverages, part-frozen slush drinks, fruit-flavoured carbonated drinks, non-alcoholic aloe vera drinks, sorbets

[beverages], sherbets [beverages], squashes, red ginseng juice beverages, smoked plum beverages, pineapple juice beverages, grape juice beverages, orange juice beverages, apple juice beverages, syrups and other non-alcoholic preparations for making beverages, syrups for making soft drinks, malt wort, non-alcoholic beverages containing malt , malt and malt extracts for making beverages. malt syrup for beverages, powders used in the preparation of fruit-based beverages, pastilles for effervescing beverages, powders for effervescing beverages, preparations for making beverages, alcoholic beverages, except beers, spirits, distilled spirits, liqueurs, alcoholic carbonated beverages, except beer, ciders, sweet or hard cider, alcoholic fruit beverages, alcoholic energy drinks, alcoholic egg nog, edible alcoholic beverages, low alcoholic drinks, alcoholic cocktails containing milk, alcoholic tea-based beverage, alcoholic fruit cocktail drinks, alcoholic coffee-based beverage, alcoholic beverages except beers, pre-mixed alcoholic beverages, alcoholic cocktails in the form of chilled gelatines, wines, low-alcoholic wine, red wines, rose wines, prepared wine cocktails, natural sparkling wines, mulled wines, white wines, rums, spiced rum, white rum, aged rum, dark rum, vodkas, vodka mixtures, mixed alcoholic drinks containing vodka, alcoholic beverages containing vodka, whiskeys, malt whisky, gin, flavoured gin, gin-based beverages, fruit-infused gins, cucumber-infused gin, sloe gin, grappas, tequilas, ports, kirsches, arracks, brandies, calvados, cachaças, alcopops, araks, aperitifs, anisette, sakes, sangrias, sherries, schnapps, vermouths, rice alcohols, brandies, scotch, bourbons, prepared alcoholic cocktails, alcoholic preparations for making beverages, alcoholic essences, alcoholic cordials, alcoholic punches, alcoholic bitters, alcoholic jellies, alcoholic extracts, prepared alcoholic cocktails, alcoholic fruit extracts, alcoholic cocktail mixes, alcoholic aperitif bitters, alcoholic cordials containing vodka, alcoholic extracts containing vodka, alcoholic bitters containing vodka.