

O/0389/26

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK REGISTRATION

NO. UK00003666387

BY ALKAABI EST



IN CLASS 30 AND 43

AND

AN APPLICATION FOR A DECLARATION OF

INVALIDITY

UNDER NO. CA000507482

BY MRS. SREEVIDYA KUMARAMKANDATH

Background and pleadings

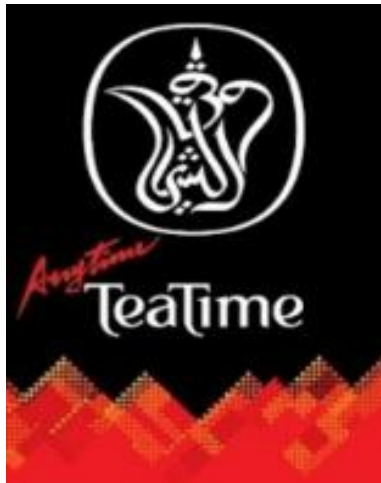
1. On 8 July 2021, ALKAABI EST (“the registered proprietor”) applied to register the mark (contested mark) shown on the cover page of this decision. It is registered under No. UK00003666387, dated 3 December 2021. It stands registered in respect of the following goods and services:

Class 30: Coffee; tea; cocoa; bread; pies; sweets; iced sweets.

Class 43: Food and beverage services; cafe and restaurant services.

2. On 25 June 2024, MRS. SREEVIDYA KUMARAMKANDATH (“the cancellation applicant”) made an application for a declaration of invalidity in respect of the contested mark, and all the services for which it is registered, pursuant to section 47(2) of the Trade Marks Act 1994 (“the Act”). The application is based upon section 5(2)(b) of the Act.

3. The cancellation applicant relies upon the following International trade mark:



International Registration no. WO0000001555663

Filing date: 19 August 2020

Registration date: 13 May 2021

Priority date: 26 October 2020¹

For the purposes of these proceedings, the cancellation applicant relies upon all the services for which the mark is registered:

Class 43: Services for providing food and drinks; snack-bar services; fast-food restaurant services; cafeteria services; take away food services.

4. The earlier mark, by virtue of its earlier filing date, constitutes an earlier mark in accordance with section 6 of the Act. The Earlier Mark was registered less than five years before the filing date of the Contested Mark and is therefore not subject to proof of use in accordance with section 6A of the Act. The cancellation applicant can, therefore, rely upon all of the goods and services it has identified without having to demonstrate use of the marks
5. The cancellation applicant submits that the marks contain identical words and an identical figurative element, and that the earlier mark covers identical services of the contested mark, and that the goods in the contested mark are similar and complimentary to the services of the earlier mark. The cancellation applicant further submits that it would be highly likely that the public would be confused into thinking that the marks emanated from the same source or that there was some connection in the course of trade between the owner of the earlier mark and the owner of the contested mark.²
6. The registered proprietor filed a counterstatement denying the grounds of invalidation but admits that that the goods and services in the contested mark are similar and/or complimentary with the class 43 services of the earlier mark.³
7. The registered proprietor is represented by HGF Limited and the cancellation applicant is represented by Regimark SIA.

¹ EUIPO 018326444

² Amended TM26I and statement of grounds filed 25 June 2024, Section A, Q5.

³ Amended TM8 and counterstatement filed 10 December 2024, paragraphs 5 and 6.

8. Only the cancellation applicant filed evidence and submissions, as detailed below. Neither party requested a hearing nor filed written submissions in lieu of a hearing. This decision is taken following a careful perusal of the papers.

EVIDENCE AND SUBMISSIONS

9. The cancellation applicant's evidence comes in the form of the witness statement of Natalija Anohina, authorised to make the statement on behalf of the cancellation applicant. The witness statement is dated 1 April 2025 and is accompanied by two exhibits. At the same time, the cancellation applicant filed submissions. The evidence has been filed to support the cancellation applicant's claim that the contested goods and services are identical/similar to the earlier services.
10. I can confirm that I have reviewed the evidence in its entirety and will refer to it later in my decision, to the extent I consider it necessary.

RELEVANCE OF EU LAW

11. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

PRELIMINARY ISSUES

Grounds withdrawn

12. The initial application was based on Sections 5(1), 5(2)(a), 5(2)(b), 5(4)(b) and Section 3(6). In its submissions filed 1 April 2025,⁴ the cancellation applicant withdrew its claims under section 5(1), 5(2)(a), 5(4)(b) and 3(6), for the sake of procedural efficiency. The proceedings will therefore continue on the basis of section 5(2)(b) grounds only.

⁴ Submissions (statement of grounds) filed 1 April 2025, paragraphs 1 and 2.

DECISION

Section 47

13. The relevant parts of section 47 of the Act are as follows:

“(2) Subject to subsections (2A) and (2G), the registration of a trade mark may be declared invalid on the ground—

- (a) that there is an earlier trade mark in relation to which the conditions set out in section 5(1), (2) or (3) obtain, or
- (b) that there is an earlier right in relation to which the condition set out in section 5(4) is satisfied, unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.

[...]

(2A) The registration of a trade mark may not be declared invalid on the ground that there is an earlier trade mark unless—

- (a) the registration procedure for the earlier trade mark was completed within the period of five years ending with the date of application for the declaration,

(b) [...]

(c) [...]

(5) Where the grounds of invalidity exist in respect of only some of the goods or services for which the trade mark is registered, the trade mark shall be declared invalid as regards those goods or services only.

(5A) An application for a declaration of invalidity may be filed on the basis of one or more earlier trade marks or other earlier rights provided they all belong to the same proprietor.

(6) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made:

Provided that this shall not affect transactions past and closed.

Section 5(2)(b)

14. Section 5(2) of the Act states that:

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

...

(a) it is identical with an earlier trade mark and is to be registered for goods or services similar to those for which the earlier trade mark is protected, [...]

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark”.

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

The Principles

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

(a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;

(f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa; Page 8 of 20

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;

(k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically linked undertakings, there is a likelihood of confusion.

Comparison of goods and services

16. When making the comparison, all relevant factors relating to the goods in the specifications should be taken into account. In the judgment of the Court of Justice of the European Union (“CJEU”) in *Canon*, Case C-39/97, the court stated at paragraph 23 that:

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary.

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

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;
- (d) The respective trade channels through which the goods or services reach the market;

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

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

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

19. The competing goods and services are as follows:

Cancellation applicant’s services	Registered proprietor’s goods and services
	Class 30: Coffee; tea; cocoa; bread; pies; sweets; iced sweets.
Class 43: Services for providing food and drinks; snack-bar services; fast-food restaurant services; cafeteria services; take away food services.	Class 43: Food and beverage services; cafe and restaurant services.

20. I note the registered proprietor’s comments as referred to above in paragraph [6] regarding similarity and complementarity between the respective goods and

services. However, as the registered proprietor did not specify as to what degree they considered the goods and services to be similar, I am required to undertake a full assessment of the goods and services at issue.

21. In its submissions,⁵ the cancellation applicant claims:

“that the contested goods of Class 30 (Coffee; tea; cocoa; bread; pies; sweets; iced sweets) and the contested services in Class 43 (Food and beverage services; cafe and restaurant services) of the Contested Registration are identical and/or similar to various degrees (from average to high) to the Class 43 services (Services for providing food and drinks; snack-bar services; fast-food restaurant services; cafeteria services; take away food services) covered by the Earlier Mark.

In addition to the similarity factors normally to be assessed in the proceedings under Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc., Case C-251/95, such as nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary, the Witness Statement and the Exhibits attached address this issue and proves that the goods and services under comparison are highly similar if not identical.

Based on the Witness Statement and its Exhibits, it might be assumed that consumers often associate certain brands or businesses with both goods and services and may reasonably assume that a business offering food and drink services would also produce or sell related food items and might mistakenly believe that goods sold under a particular brand originate from the same source as the services offered under that brand or vice versa.

Therefore, it might be concluded that there is a sufficient similarity between the contested goods of Class 30 and the services of Class 43 and the services of Class 43 covered by the Earlier Mark.”

⁵ Cancellation applicant's submissions dated 1 April 2025

Class 30

Coffee; tea; cocoa; bread; pies; sweets; iced sweets.

22. I compare the registered proprietor's goods to the cancellation applicant's 'cafeteria services' in class 43. The cancellation applicant's services would include the provision of drinks, such as *coffee, tea* and *cocoa* as well as food and snacks, such as *bread, pies, sweets* and *iced sweets*, in cafeteria type outlets. Whilst the goods are different in nature to services and are used in different ways, they have a shared purpose, as cafeteria services are focussed on the consumption of beverages and food for sustenance or enjoyment, such as the registered proprietor's above goods. I agree with the cancellation applicant's evidence,⁶ that trade channels could overlap, as it is possible for cafeterias to sell their produce for customers to purchase and consume at home. Users will also overlap. There will be an element of competition, as consumers may decide to purchase these products and consume them at home, or visit a cafeteria. I refer to the cancellation applicant's evidence,⁷ and whilst I consider the registered proprietor's goods to be indispensable for the provision of cafeteria services, I do not consider that consumers would believe that the goods and services are derived from the same undertaking, and as such, I find that the respective goods and services are not complementary. Taking all these factors into account, I find a medium degree of similarity between the respective goods and services.

Class 43

Food and beverage services.

23. I compare the registered proprietor's above services to the cancellation applicant's 'Services for providing food and drinks'. Although worded differently in the parties' specification, they describe the same service and are therefore identical.

⁶ Exhibit II

⁷ Exhibit II

Cafe [...] services.

24. I compare the registered proprietor's above services to the cancellation applicant's '*cafeteria services*'. Although worded differently in the parties' specification, they describe the same service and are therefore identical.

[...] restaurant services.

25. I find that the registered proprietor's above services encompass the cancellation applicant's '*fast-food restaurant services*'. These services are therefore considered identical according to the principles set out in *Meric*.

Average consumer and the purchasing act

26. 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 in question: *Lloyd Schuhfabrik Meyer, Case C-342/97*.

27. In *Iconix Luxembourg Holdings SARL v Dream Paris Europe Inc & Anor*, [2025] UKSC 25, the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)* [2024] EWCA Civ 262, where he pointed out that:

- (a) Consumers who are ill-informed or careless, or consumers with specialised knowledge or who are excessively careful are excluded from consideration;
- (b) The average consumer provides a standard which enables the courts to strike a balance between the competing interests involved, such as trade mark owners, their competitors and consumers.
- (c) The average consumer is neither a single hypothetical person nor a mathematical average; assessment from the perspective of the average

consumer does not involve a statistical test. There is no single meaning rule and if, having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, a finding of infringement may properly be made;

- (d) Assessment from the perspective of the average consumer is intended to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by enabling courts and tribunals to determine such issues so far as possible without the need for evidence;
- (e) The average consumer's level of attention varies according to the category of goods or services in question; and
- (f) the average consumer rarely has the opportunity to make direct comparisons between trade marks (or between trade marks and signs) and must instead rely upon the imperfect picture of the trade mark they have kept in their mind.

28. The average consumer for the goods and services at issue will be predominantly members of the general public. However, in some cases, they will also consist of professionals, purchasing on behalf of a business undertaking. The goods at issue will be available through general retailers and their online equivalents or via food and/or drink outlets, such as restaurants and cafes. In stores, the goods will be displayed on shelves and will be self-selected by the consumer. Similarly, online, the goods will be selected by the consumer after seeing an image of the goods on a website. In food and/or drink establishments, the goods are likely to be selected visually after an inspection of the goods, either in display cabinets or on menus. As for the services, these will be selected after the consumer has viewed signage outside the establishment, promotional materials, internet searches or through word of mouth recommendations. I find that the selection process for the goods and services at issue will be primarily visual but I do not discount aural considerations.

29. The goods will be selected fairly frequently and will vary in cost but will not be particularly expensive. The services may also be selected on a frequent basis and will also vary in cost, a cafe being at the lower end of scale but a high end restaurant being relatively expensive. When selecting the goods, the consumer will consider factors such as flavour, ingredients and nutritional content whereas when selecting the services, the consumer will consider factors such as selection of food and drink on offer, reviews, dietary requirements and hygiene ratings. Considering all of these factors, I find that consumers will pay no more than a medium degree of attention when selecting the goods and services at issue.

Comparison of marks

30. 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 Court of Justice of the European Union stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

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

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

32. The respective trade marks are shown below:

Earlier mark	Contested mark
	

Overall impression

33. The earlier mark is a composite mark comprising word and figurative elements. It consists of a white circular device containing a stylised white outline drawing of a teapot, featuring curved lines and decorative detail. Although, at various points, the device has been referred to as a coffee pot and at other times as a teapot in the parties' submissions, I find that a significant proportion of average consumers would recognise it as a teapot in the context of the word placed below it. Beneath the circular device is the word 'TeaTime', presented in a slightly stylised white font in upper and lower case letters, with the capital letter 'T's slightly curved at the bottom. Positioned above this word and angled to the left, is the word 'AnyTime', presented in a much smaller stylised red font in upper and lower case letters. Although consumers generally read from left to right, this word, by reason of its size, does not detract from the dominant element 'TeaTime'. To the bottom of the mark is a geometric pattern in shades of red and orange. All elements of the mark are set against a black background. The teapot device reinforces the word 'TeaTime', which alludes to some of the services, such as '*services for providing food and drinks*'. Whilst I am conscious that attention is naturally drawn to the

elements that can be read,⁸ given the size and prominent placement of the teapot device, I consider that the word 'TeaTime' and the teapot device will play an equal and significant role in the overall impression of the mark. The remaining elements, being the word 'AnyTime' and the orange and red geometric pattern, will play a lesser role. The black background will have little impact on the consumer.

34. The registered proprietor's mark is a composite mark comprising word and figurative elements. It consists of a black circular device containing a stylised black outline drawing of a teapot, featuring curved lines and decorative detail. As noted above in paragraph [33], I consider that a significant proportion of average consumers would recognise this element as a teapot. Beneath the circular device appears a word or sentence in the Arabic alphabet. Below this is the word 'TeaTime' presented in a slightly stylised, black and bold font in upper and lower case letters, with the capital letter 'T's slightly curved at the bottom. Positioned beneath this word and angled to the right are the words 'TeaTime AnyTime' presented in a much smaller, highly stylised black font, in upper and lower case letters. The teapot device reinforces the word 'TeaTime', which in turn is allusive of some of registered proprietor's goods and services, such as 'tea' in class 30 and 'services for providing food and drinks' and 'cafeteria services' in class 43. Whilst I am conscious that attention is naturally drawn to the elements that can be read,⁹ given the size and prominent placement of the teapot device, I consider that the word 'TeaTime' and the teapot device will play an equal and significant role in the overall impression of the mark. The words 'TeaTime AnyTime', presented in a much smaller size and less prominent position, will play a lesser role, as will the Arabic element, given that most of the relevant UK public would not be familiar with the Arabic alphabet and would see it as a foreign language word.

Visual similarity

35. Visually, the marks coincide insofar as they share the dominant word 'TeaTime', together with a teapot device. These elements are identical in style and font,

⁸ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

notwithstanding that they are in white in the earlier mark and in black in the contested mark. The word 'AnyTime', which is significantly smaller in size, also appears in both marks and is presented in the same size and font, albeit red in the earlier mark and black in the contested mark. The marks differ in the positioning of 'AnyTime'. In the earlier mark it appears above and to the left of the dominant word 'TeaTime', whereas in the contested mark it is positioned beneath and angled to the right. Furthermore, in the contested mark, 'AnyTme' appears to the right of the repeated word 'TeaTime', with both elements presented in the same colour, size and font. Further points of difference are the Arabic element in the contested mark, positioned between the device and the dominant word 'TeaTime', and the red and orange geometric device and black background in the earlier mark. Taking all of these factors into account, I find the marks to be visually similar to at least a medium degree.

Aural similarity

36. From an aural perspective, both marks consist of the identical 2 syllable word 'TeaTime', which as mentioned above, due to its size and prominent placement within the mark, plays a significant role in the overall impression. Although this word is repeated in the contested mark and both marks also contain the word 'Anytime', due to the subordinate size and positioning of these additional elements in the marks, I consider it unlikely that these words would be articulated. I do not consider that consumers will articulate the device elements in the respective marks or the Arabic device in the earlier mark. If I am right in my assessment, the marks are aurally identical. Even allowing for the articulation of the words 'AnyTime' in the earlier mark and 'TeaTime AnyTime' in the contested mark, I find at least a medium degree of aural similarity between the marks.

Conceptual similarity

37. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer. This is highlighted in numerous judgments of the GC and the CJEU, including *Ruiz Picasso v OHIM*.²⁰ The assessment must, therefore, be made from the point of view of the average consumer.

38. Conceptually, the words 'TeaTime' and 'AnyTime' will be understood in the same way in both marks, although 'TeaTime' may be interpreted differently by consumers. Some consumers may understand it to mean having a drink of tea, with or without a snack, while others may see it as referring to the main evening meal. The term 'AnyTime' will be understood by the average consumer as something available without restriction as to time and/or immediately available. As per the AP decision referenced below, I must consider if the goods and services have a potential effect on conceptual meaning as a result of any allusion between the marks and the goods and services.¹⁰ In the context of the goods and services, both the marks convey the concept of it being time for tea, whether as a drink, with or without a snack, or as a meal, at any time rather than only in the afternoon or the evening. The identical teapot device in both marks further reinforces the 'TeaTime' concept conveyed by the marks. These elements in the marks are therefore conceptually identical.

39. As for the Arabic device in the contested mark, I find the average UK consumer, not knowing Arabic, is likely to see no particular concept other than that of an Arabic word in general. Turning to the earlier mark and the red and orange geometric device and black background, in my view, these elements are non-distinctive and therefore have no role to play in distinguishing the marks from a conceptual perspective. Taking all of these factors into account, I find the marks to be conceptually similar to a high degree.

Distinctive character of the earlier trade mark

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

¹⁰ BL O/1174/25, paragraph 32.

“In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49). In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

41. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctive character of a mark can be enhanced by virtue of the use that has been made of it.

42. The earlier mark consists of the words ‘AnyTime’ and ‘TeaTime’, made up of ordinary dictionary words, combined with a teapot device, a red and orange geometric pattern and a black background. In the context of the relevant services, ‘TeaTime’ is allusive of the nature of the services, such as providing food and drink, and the teapot device reinforces this allusion. The word ‘AnyTime’ is likely to be understood as laudatory of the services’ ability to be utilised at any time. I consider the remaining figurative elements to be decorative. Accordingly, I find

that the mark as a whole is inherently distinctive to between a low and medium degree.

Likelihood of Confusion

43. 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 scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e., a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and vice versa. It is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the goods and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

44. Earlier in the decision I found:

- the marks to be visually and aurally similar to at least a medium degree, and conceptually similar to a high degree.
- the parties' goods to be identical and similar to a medium degree.
- the earlier mark to have a low to medium distinctive character for the services at issue. On this point, it is acknowledged that a weaker degree of distinctive character in an earlier mark does not preclude a finding of confusion.¹¹
- the average consumer for the goods will be members of the general public who will select the goods primarily by visual means, although I do not discount an

¹¹ See *L'Oréal SA v OHIM*, Case C-235/05 P

aural component. The average consumer will pay no more than a medium degree of attention during the purchasing process.

45. Taking all of the factors set out above into account, I find that the marks share the identical, prominently positioned word 'TeaTime' and the identical teapot device, each of which makes a significant contribution to the overall impression made by the marks. Both marks also include the word 'AnyTime' shown at an angle and in the same script. Whilst I have found that the earlier mark is inherently distinctive only to a low to medium degree and note that the shared elements are allusive of the respective goods and services, there is very little beyond those shared elements for the consumer to grasp in order to differentiate between the marks. The red and orange geometric device and black background in the earlier mark will be viewed as decorative and the Arabic device in the contested mark will likely be seen as a foreign word with no obvious meaning such that it could easily be overlooked or mis-recalled as belonging to the earlier mark. Bearing in mind the average consumer's imperfect recall, and the fact that marks are rarely compared side-by-side, I find that there will be a likelihood of direct confusion between the earlier mark and the contested mark.

46. If I am wrong in my finding of direct confusion, it now falls to me to consider the likelihood of indirect confusion. I note that in the case of *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at [16] that "a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion". Arnold LJ agreed, pointing out that there must be a "proper basis" for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

47. In *L.A. Sugar Limited v Back Beat Inc*¹² Mr Iain Purvis Q. C. (as he then was), as the Appointed Person, explained that [my words in parentheses]:

¹² Case BL O/375/10

“17. Instances where one may expect the average consumer to reach such a conclusion [i.e. to conclude that marks relate to the same or economically linked undertakings] 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)".

48. Even if the average consumer were to notice the differences between the marks and not directly mistake one for the other, I consider that there would still be a likelihood of indirect confusion. The marks do not fit neatly into the Purvis criteria because they are so close together. The marks share the teapot device and the word 'TeaTime', which together comprise the dominant elements of each mark, and these elements are indicative of marks that are offered by the same economic undertaking. The marks also share the word 'AnyTime', shown at an angle and in the same script, but it is presented in different positions and the word is preceded by the repeated word 'TeaTime' in the contested mark. These slight differences, together with the Arabic element in the contested mark, and the red and orange geometric pattern and black background in the earlier mark compared with the plain background in the contested mark, would be simply understood as variant presentations of the same brand. Given the identity and similarity of the goods and services, the at least medium degree of visual and aural similarity, and the high degree of conceptual similarity between the marks, and also bearing in mind that it is not uncommon for a brand to undergo a 're-fresh' or 'brand-revamp' to

reflect changing marketing considerations, I consider that the average consumer would assume that the marks originate from the same, or economically linked, undertakings. Accordingly, there is a likelihood of indirect confusion.

CONCLUSION

49. The application to invalidate UK trade mark registration number 3666387 under section 5(2)(b) of the Act is successful in its entirety. Subject to any appeal, the contested mark will be declared invalid. Under section 47(6) of the Act, the registration is deemed to have never been made.

COSTS

50. The invalidation under section 5(2)(b) has been successful in respect of all the contested goods. Subject to any successful appeal, the application will be declared invalid in its entirety.

51. The cancellation applicant has been successful and is therefore entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice (“TPN”) 1/2023. The sum is calculated as follows:

Preparing a statement and considering the other side’s statement:	£250
Preparing evidence and submissions	£300
Official fee:	£200
Total:	£750

52. I therefore order ALKAABI EST to pay MRS. SREEVIDYA KUMARAMKANDATH the sum of £750. This sum is to be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 6th day of May 2026

**Mrs Joanne Roberts
For the Registrar**