O/0396/26

TRADE MARKS ACT 1994

IN THE MATTER OF
THE UK DESIGNATION OF INTERNATIONAL
REGISTRATION NO. WO0000001772013 BY SILVERSKY PTE. LTD.
FOR PROTECTION OF THE FOLLOWING TRADE MARK:

FOOD FOR THE GOOD

IN CLASS 31

AND

IN THE MATTER OF THE OPPOSITION THERETO
UNDER NO. 447247
BY MARS PETCARE UK

BACKGROUND AND PLEADINGS

1. SILVERSKY PTE. LTD. ("the holder") designated the international registration ("the IR") shown on the front cover of this decision for protection in the UK on 27 October 2023. This is also its international registration date. Protection is sought for the following goods:

> **Class 31:** *Pet birds; pet animals; pet food; pet birds; pet animals; pet beverages; pet foodstuffs; pet rabbit food; edible pet treats; beverages for pets; sand for pet toilets; powdered milk for pets; sanded paper [litter] for pets; aromatic sand [litter] for pets; edible silvervine powder for pet cats; pet treats in the nature of bully sticks.*

2. On 30 April 2024, the application was opposed by Mars Petcare UK ("the opponent") based upon Sections 5(2)(b) and 5(3) of the Trade Marks Act 1994 ("the Act").

3. Under both Sections 5(2)(b) and 5(3), the opponent opposes the IR in its entirety relying upon the following trade marks and the goods and services covered by the same, as shown below:

UK00914204853 ("the first earlier mark")[1] PEDIGREE. FEED THE GOOD Filing date: 05 June 2015 Registration date: 05 October 2015 Under Section 5(2)(b), the opponent relies upon the goods and services for which the mark is registered, namely: **Class 31:** *Agricultural, horticultural and forestry products, grains and seeds; live animals, birds and fish; cuttlefish bone; bones for dogs; edible chews for animals;*

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

products for animal litter; fresh fruits and vegetables; foodstuffs and beverages for animals, birds and fish. **Class 44:** *Providing information on pet health care and pet nutrition.* Under Section 5(3), the opponent claims reputation for the registered goods and services as set out above.
UK00003917149 (“the second earlier mark”) Feed the good. Adopt. Filing date: 30 May 2023 Registration date: 25 August 2023 Under Section 5(2)(b), the opponent relies upon the services for which the mark is registered, namely: **Class 35:** *Promotional services, namely, promoting public awareness of the need for adopting animals, pet adoption, responsible pet ownership and the proper care and treatment of pets; business consulting services in the field of promoting the need for adopting animals, pet adoption, responsible pet ownership and the proper care and treatment of pets.* Under Section 5(3), the opponent claims reputation for the registered services as set out above.

4. By virtue of their earlier filing dates, the trade marks relied upon by the opponent are “earlier marks” in accordance with Section 6 of the Act. Only the first earlier mark has been registered for more than five years at the filing date of the IR, and, as such, is theoretically subject to the use conditions under Section 6A of the Act. The second mark, however, is not subject to proof of use - this means that the opponent can rely upon the services it has identified without having to prove genuine use.

5. Under Section 5(2)(b), the opponent claims that there is a likelihood of confusion because the goods and services are identical or similar, and the marks are highly

similar. In addition, the opponent claims that its earlier marks have acquired enhanced distinctive character due to the opponent's extensive use of them in the UK, which, the opponent states, increases the likelihood of confusion.

6. Under Section 5(3), the opponent claims that its earlier marks enjoy a reputation in relation to all of the goods and services identified above and that use of the IR in relation to the goods concerned will take unfair advantage of, and be detrimental to, the distinctive character or repute of the opponent's earlier marks.

7. The holder filed a defence and counterstatement, denying the opponent's claims and putting the opponent to proof of use of the first earlier mark.

HEARING AND REPRESENTATION

8. The opponent is represented by Stobbs IP, and the holder is represented by RightPro IP & Legal Consultancy Ltd. A hearing took place before me, by video conference, on 4 December 2025. The opponent was represented by Julius Stobbs of Stobbs IP. The holder did not attend the hearing and elected not to file submissions in lieu.

Relevance of EU Law

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

EVIDENCE

10. Only the opponent filed evidence in these proceedings. However, the holder filed submissions dated 11 November 2024.

11. The opponent's evidence came in the form of a witness statement from Robert Mayers dated 6 September 2024. Mr Mayers' witness statement is accompanied by 24 exhibits (being those labelled exhibit 1-24). Mr Mayers is a Senior Specialist – Marketing Properties at the opponent's company, a position he says he has held for at least ten years. His evidence is aimed at showing use of the earlier marks by the opponent in order to support the claims based on enhanced distinctiveness and reputation.

12. I do not intend to summarise the evidence (or the submissions of the parties, for that matter) in full here. However, I confirm that I have taken all filed documents into account and will summarise them to the extent that I deem necessary below.

DECISION

Proof of use

13. Relevant statutory provision: Section 6A:

> "(1) This section applies where
>
> (a) an application for registration of a trade mark has been published,
>
> (b) there is an earlier trade mark of a kind falling within section 6(1)(a), (aa) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and
>
> (c) the registration procedure for the earlier trade mark was completed before the start of the relevant period.
>
> (1A) In this section "the relevant period" means the period of 5 years ending with the date of the application for registration mentioned in subsection (1)(a) or (where applicable) the date of the priority claimed for that application.

(2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.

(3) The use conditions are met if –

(a) within the relevant period the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or

(b) the earlier trade mark has not been so used, but there are proper reasons for non- use.

(4) For these purposes –

(a) use of a trade mark includes use in a form (the "variant form") differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and

(b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(5)-(5A) [Repealed]

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services."

14. As the first earlier mark is a comparable mark, paragraph 7 of Part 1, Schedule 2A of the Act is also relevant. It reads:

"7.— (1) Section 6A applies where an earlier trade mark is a comparable trade mark (EU), subject to the modifications set out below.

(2) Where the relevant period referred to in section 6A(3)(a) (the "five-year period") has expired before IP completion day—

(a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in section 6A(3) and (4) to the United Kingdom include the European Union.

(3) Where [IP completion day] falls within the five-year period, in respect of that part of the five-year period which falls before IP completion day —

(a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM ; and

(b) the references in section 6A to the United Kingdom include the European Union".

15. In *easyGroup Ltd v Nuclei Ltd & Ors* [2023] EWCA Civ 1247, Arnold LJ summarised the law relating to genuine use as follows:

"105. The principles applicable to determining whether there has been genuine use of a trade mark have been considered by the CJEU in a considerable number of cases, the principal decisions being Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, Case C-259/02 *La Mer Technology Inc v Laboratories Goemar SA* [2004] ECR I-1159, Case C-416/04 P *Sunrider Corp* v *Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bundervsvereinigung Kamaradschaft 'Feldmarschall Radetsky'*[2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Merken BV v Hagelkruis Beheer BV*

[EU:C:2012:816], Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], Case C-141/13 *P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089], Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434] and Joined Cases C–720/18 and C–721/18 *Ferrari SpA v DU* [EU:C:2020:854].

106. Ignoring issues which do not arise in the present case, such as use in relation to spare parts or second-hand goods and use in relation to a sub-category of goods or services, the principles may be summarised as follows:

(1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37].

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at[36]; *Sunrider* at [70]; *Verein* at [13]; *Centrotherm* at [71]; *Leno* at [29]; *Ferrari* at [32].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Centrotherm* at [71]; *Leno* at [29]; *Gözze* at [37], [40]; *Ferrari* at [32].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with

the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34]; *Leno* at [29]-[30], [56]; *Ferrari* at [33].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no *de minimis* rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72]; *Leno* at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32]."

16. Section 6A of the Act (cited above) sets out that the relevant period for the present assessment is the five-year period prior to the filing date of the application, being 27 October 2023. The relevant period is, therefore, 28 October 2018 to 27 October 2023 ("the relevant period"). For the avoidance of doubt, the relevant territory for genuine

use prior to 31 December 2020 ("IP Completion Day") is the EU at large but, thereafter, it is the UK only.

17. In its written submission of 11 November 2024, the holder states:

> *"It is necessary to stress out that none of the evidence submitted by the Opponent proves the use of the mark UK00914204853 in class 31. PEDIGREE mark, however, is used on the goods [in] class 31 and has reputation, hence it is highly distinctive. The evidence proves that with their distinctive trade mark PEDIGREE, the Opponent promote the adoption of the pets, for the charity/adoption purposes, not for commercial use for the sale of their PEDIGREE products in class 31. None of the documents provided are explaining or showing the use of "FEED THE GOOD. (ADOPT)" alone and none of the numbers provided are related to the use without PEDIGREE distinctive mark. It is the PEDIGREE mark promoted in class 31, and the marks containing the slogan "FEED THE GOOD" or "FEED THE GOOD. ADOPT." are used in relation with promotion/encouraging of adoption services only. Therefore, they shall not be deemed as all the submitted documents are proving the use and/or reputation of the slogans alone, without PEDIGREE mark, on the goods in class 31."*

18. In his skeleton argument, Mr Stobbs stated that genuine use has been demonstrated in relation to the following goods and services of the first earlier mark's specification:

> **Class 31:** ~~*Agricultural, horticultural and forestry products, grains and seeds; live animals, birds and fish;*~~ *cuttlefish bone; bones for dogs; edible chews for animals;* ~~*products for animal litter; fresh fruits and vegetables;*~~ *foodstuffs and beverages for animals, birds and fish.*
>
> **Class 44:** *Providing information on pet health care and pet nutrition.*

19. It is obvious that the parties disagree about what the evidence shows. The holder accepts that the opponent's mark 'PEDIGREE' has been used, and has a reputation,

in relation to the registered goods in class 31. It also accepts that the slogans “FEED THE GOOD” or “FEED THE GOOD. ADOPT.” are used in relation to services aimed at promoting/encouraging pets’ adoption but not in relation to goods in class 31 and contends that there is no use of the slogans without the mark ‘PEDIGREE’.

20. Bearing in mind that the mark subject to proof of use is ‘PEDIGREE. FEED THE GOOD’ and that the goods and services for which the opponent claims use are items of foodstuff for animals in class 31 and services consisting of providing information on pet health care and pet nutrition in class 44, the holder’s admission does not benefit the opponent because: 1) conceding use for the mark ‘PEDIGREE’ in relation to goods in class 31 is not the same as conceding use for the mark ‘PEDIGREE. FEED THE GOOD’ which is the mark subject to proof of use and 2) whilst use of the mark ‘PEDIGREE. FEED THE GOOD’ is conceded for services aimed at promoting/encouraging pets’ adoption, these services are not the same as the registered *Providing information on pet health care and pet nutrition* for which genuine use must be shown.

21. Accordingly, since Mr Stobbs’ claim that the earlier mark has been used in relation to the goods and services listed above is an admission that there is no genuine use for the goods in strikethrough, I will limit my consideration of genuine use to the following:

> **Class 31:** *cuttlefish bone; bones for dogs; edible chews for animals; products for animal litter; fresh fruits and vegetables; foodstuffs and beverages for animals, birds and fish*.
>
> **Class 44:** *Providing information on pet health care and pet nutrition.*

22. I now turn to the evidence.

The opponent’s evidence of use

23. A summary of the evidence was helpfully provided by Mr Stobbs at paragraph 7 of his skeleton argument, focusing on the evidence relating to use of the earlier marks relied upon in this opposition.

24. However, a big chunk of Mr Mayers's evidence is about the history of the opponent's business and the success of the brand 'PEDIGREE' as a household name. Though the name 'PEDIGREE' is not the shared element in this opposition, Mr Stobbs advanced an argument whereby he submitted that the enhanced distinctiveness and reputation acquired by the name 'PEDIGREE' means that some of that distinctiveness has been transferred to (and benefits) the part of the earlier marks which represents the similar element of the competing marks (i.e. FEED THE GOOD). This is because, as I understand it, the earlier marks either incorporate the brand 'PEDIGREE' or have been used in conjunction with it. Insofar as this part of the opponent's evidence helps with building up a picture from which the assessment of the opponent's claim can be fully made, I will refer to it.

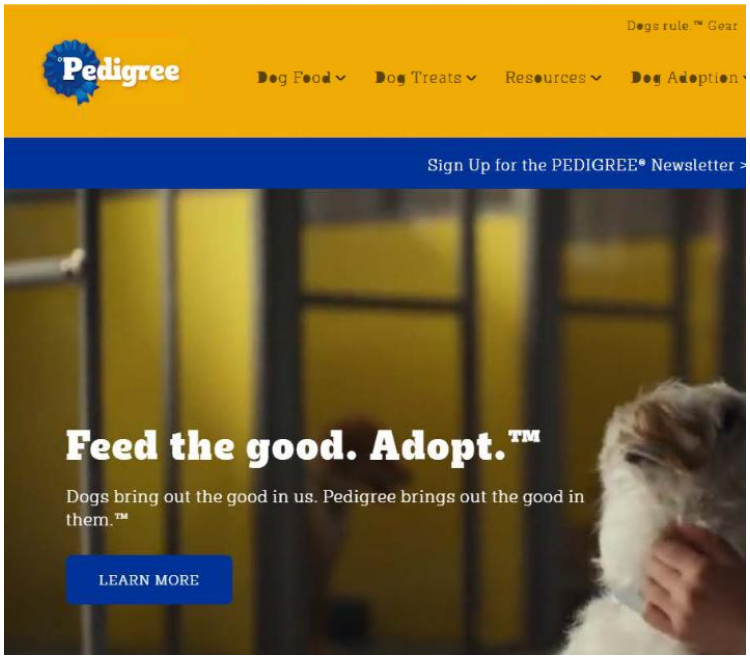
25. The opponent's company is part of a long-standing US business (i.e. Mars Incorporated, hereafter "Mars") that was founded in 1911 and made $47billion in annual sales worldwide in 2022. Mars has three major arms of its business. These are: Mars Petcare, Mars Snacking and Mars Food and Nutrition. Each of these divisions has its own range of products and brands, which include globally famous brands such as M&M'S, SNICKERS, ORBIT and SKITTLES (Mars Snacking), BEN'S ORIGINAL, DOLMIO (Mars Food and Nutrition) and PEDIGREE, WHISKAS, ROYAL CANIN, SHEBA and CESAR (Mars Petcare);[2] the latter, Mr Mayers says, are UK household names. Mars Petcare accounts for 59% of Mars' overall revenue worldwide and it is the largest and most profitable element of Mars' business.

26. Mr Mayers also explains that the Mars Petcare division, of which the opponent is part, has two main arms of its pet care business: pet food and an adoption and rehoming programme which aims to see the rehoming of cats and dogs globally.[3]

[2] Exhibit 3
[3] Exhibits 5-6

27. Mr Mayers further states that the opponent's 'PEDIGREE' brand (formally 'PEDIGREE CHUM') is a major pet food brand in the UK and globally, and that the 'PEDIGREE' business focuses on being a quality-tested and research-driven pet food manufacturer which has put pet health and nutrition at the forefront of its mission for the past 80 years.

28. Significantly, Mr Mayers clarifies that the opponent uses the slogan 'FEED THE GOOD' for its 'PEDIGREE' branded products including its pet food, and the slogan 'FEED THE GOOD. ADOPT' for its adoption and rehoming of shelter animals' programme. An example (undated) of use of the mark 'FEED THE GOOD. ADOPT' on the opponent's 'PEDIGREE' website is provided and it is reproduced below:[4]



29. Mr Mayers also says that "*since the Opponent launched its FEED THE GOOD campaign in the UK in 2015, the FEED THE GOOD brands have been used consistently in promotional materials in stores and in advertisements and marketing materials online and elsewhere".*

30. It appears therefore that the mark 'FEED THE GOOD' is used by the opponent as a slogan in the marketing of the long-standing 'PEDIGREE' brand since 2015. Two

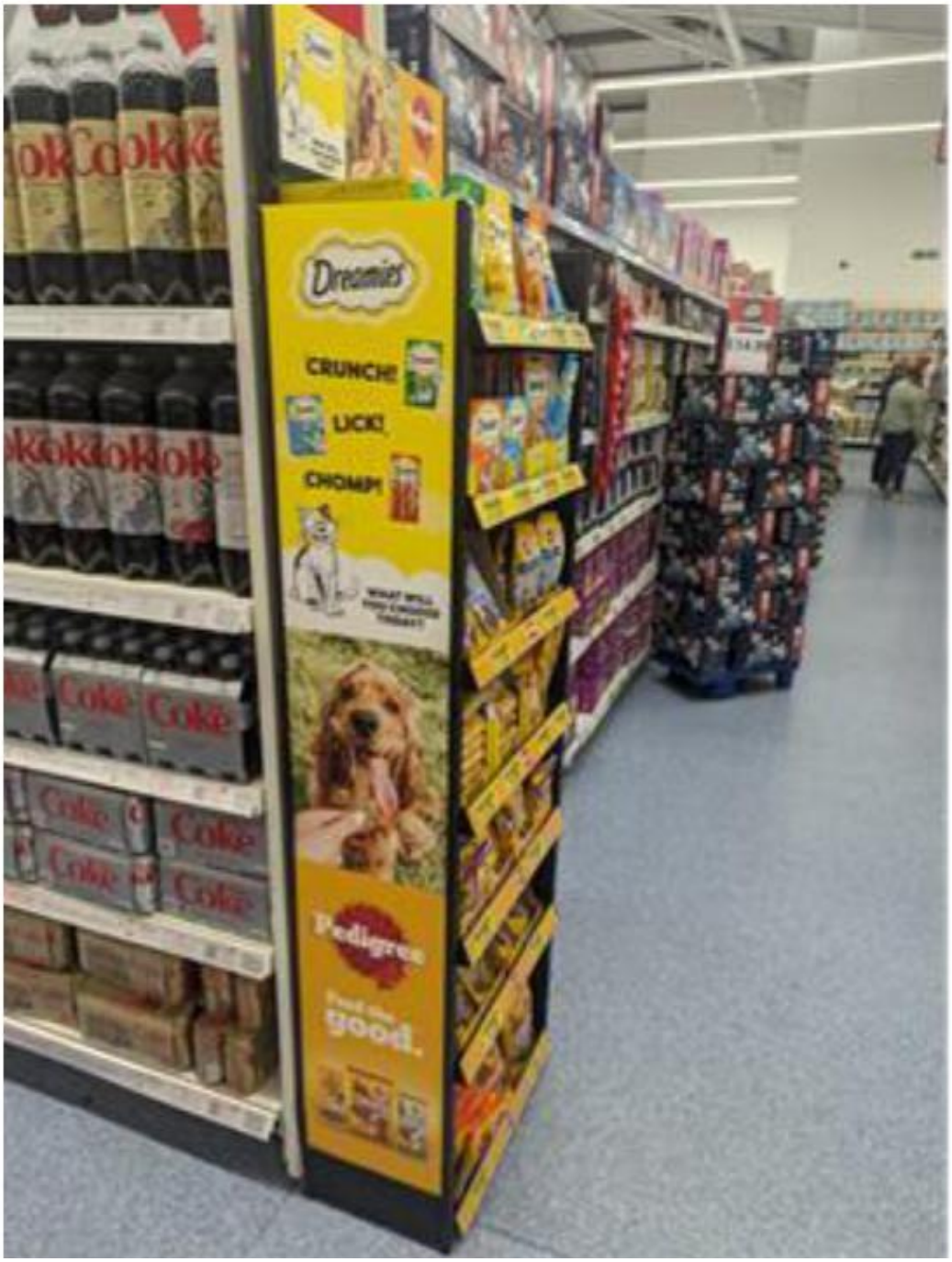
[4] Exhibit 9

versions of the same slogans were effectively developed and used in relation to the opponent's two arms of business, namely pet food (i.e. 'FEED THE GOOD') and pet adoption services ('FEED THE GOOD. ADOPT').

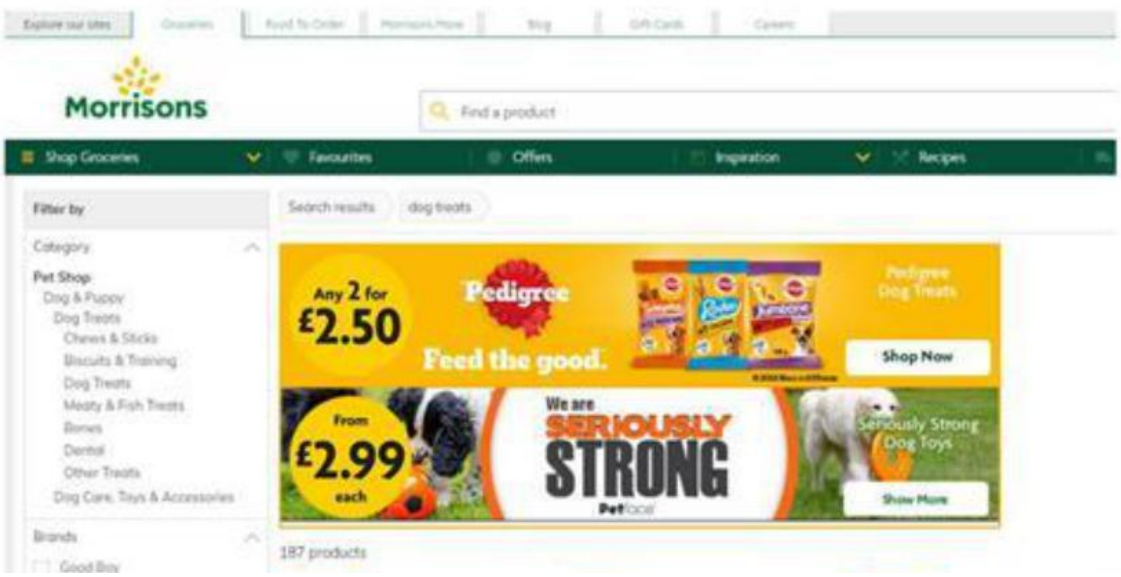
31. Mr Mayers says that the opponent's 'PEDIGREE'-branded products are marketed alongside the 'PEDIGREE. FEED THE GOOD' mark in store and online in major UK supermarkets, including ASDA, Lidl, Morrisons, Tesco, B&M and the Coop. He also says that 'PEDIGREE'-branded products are sold in close combination with, and in close proximity to, the slogan 'FEED THE GOOD', in point-of-sale materials, as shown by the following images:

+ ALDI P1 2023

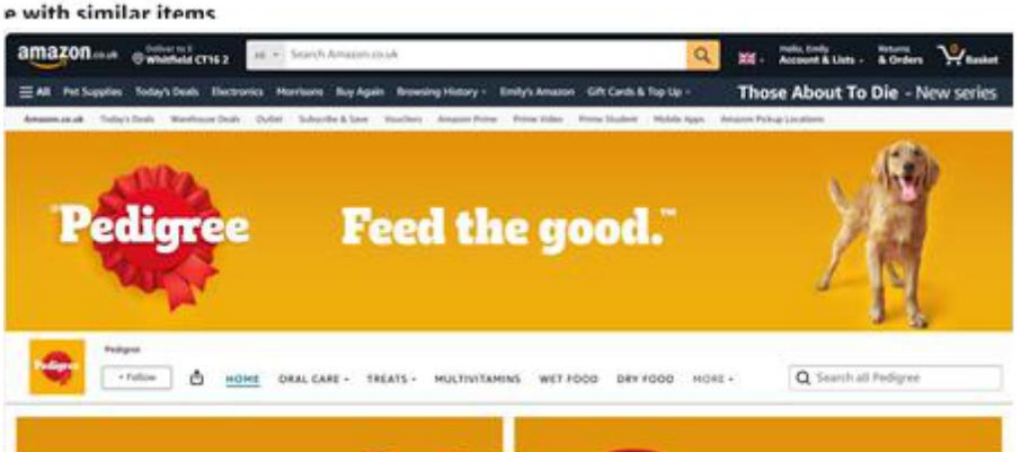
B&M, H1 2024



+ Morrisons P3 2024



32. In addition, the 'FEED THE GOOD' slogan has been used alongside the 'PEDIGREE' brand on the opponent's Amazon webpage which has been open since 2019. An example of how the mark is used is shown below:[5]



33. According to Mr Mayers, the UK Amazon site has had over 5-million-page views and has generated €30million in sales value since 2021.

34. UK sales of 'PEDIGREE' branded products are as follows:

[5] Exhibit 11

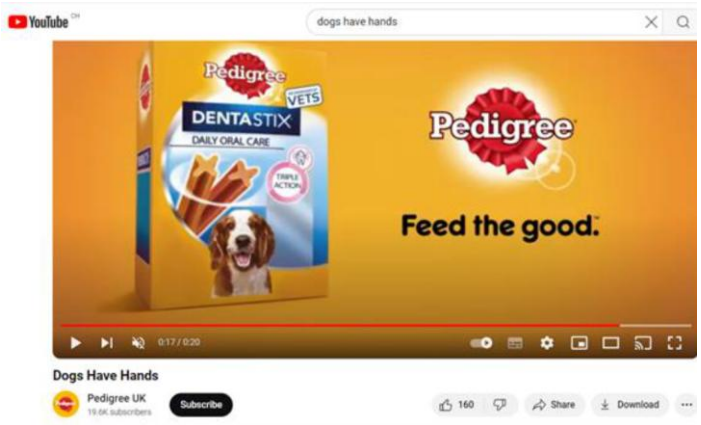
PEDIGREE	2018 (USD)	2019	2020	2021	2022	2023	2024 YTD
Annual Sales (*in Euros - except 2018*)	248 million	290 million	300 million	310 million	320 million	340 million	185 million

35. Mr Mayers also provides the following figures which, he says, represent the total amounts incurred in advertising and promoting the 'PEDIGREE' branded products in the UK, of which 'FEED THE GOOD' is used as a slogan:

PEDIGREE	2019	2020	2021	2022	2023	2024 YTD
Marketing & Advertising Spend – *Euros*	8 million	9 million	9 million	2 million	6 million	6 million

36. In addition, in 2023, the opponent spent approximately €876,000 in the UK on its 'FEED THE GOOD' advertising campaign in particular. This includes social media promotions, television campaigns, YouTube adverts and point of sale materials. Examples of specific types of media coverage promoting the 'PEDIGREE' and 'PEDIGREE. FEED THE GOOD' marks from its launch in 2015 up to the date of the witness statement are provided as follows:

- Pedigree ran the "Dogs Have Hands" campaign for 26 weeks each year in the years 2017-2020. The end tag line of that advertisement includes 'FEED THE GOOD' as shown below:



- Pedigree has a dedicated page for its adoption dogs service. As part of this adoption service, Pedigree has used the mark ‘FEED THE GOOD. ADOPT’. This mark features on its website.[6]

- Pedigree has launched several video campaigns featuring the mark ‘FEED THE GOOD’. An example of such use in a video campaign launched in August 2023 is provided as shown below:

37. Lastly, Mr Mayers refers to the opponent's ‘FEED THE GOOD’ marks having featured in several British newspapers and magazines, including Campaign and PR Newswire.

Genuine use

Form of the mark

38. The registered mark is ‘PEDIGREE. FEED THE GOOD’. Admittedly, the use shown in evidence displays a slight variation of the mark which has been used compared to the mark that is registered insofar as (a) the word ‘PEDIGREE’ appears separate from the words ‘FEED THE GOOD’; (b) the dot which separates the two

[6] Exhibit 13

elements ‘PEDIGREE’ and ‘FEED THE GOOD’ is absent and (c) the word ‘PEDIGREE’ is placed above a red logo representing a rosette.

39. In *Lactalis McLelland Limited v Arla Foods AMBA*, BL O/265/22, Phillip Johnson, sitting as the Appointed Person, considered the correct approach to the test under Section 46(2); this is equally applicable in this case even though it is not a revocation. He said:

> “13. […] While the law has developed since *Nirvana* [BL O/262/06], the recent case law still requires a comparison of the marks to identify elements of the mark added (or subtracted) which have led to the alteration of the mark (that is, the differences) (see for instance, T-598/18 *Grupo Textil Brownie v EU*IPO*, EU:T:2020:22, [63 and 64]).
>
> 14. The courts, and particularly the General Court, have developed certain principles which apply to assess whether a mark is an acceptable variant and the following appear relevant to this case.
>
> 15. First, when comparing the alterations between the mark as registered and used it is clear that the alteration or omission of a non-distinctive element does not alter the distinctive character of the mark as a whole: T-146/15 *Hypen v EUIPO*, EU:T:2016:469, [30]. Secondly, where a mark contains words and a figurative element the word element will usually be more distinctive: T-171/17 *M & K v EUIPO*, EU:T:2018:683, [41]. This suggests that changes in figurative elements are usually less likely to change the distinctive character than those related to the word elements.
>
> 16. Thirdly, where a trade mark comprises two (or more) distinctive elements (eg a house mark and a sub-brand) it is not sufficient to prove use of only one of those distinctive elements: T-297/20 *Fashioneast v AM.VI. Srl*, EU:T:2021:432, [40] (I note that this case is only persuasive, but I see no reason to disagree with it). Fourthly, the addition of descriptive or suggestive words (or it is suppose figurative elements) is unlikely to change the distinctive character of the mark: compare, T-258/13 *Artkis*, EU:T:2015:207, [27] (ARKTIS

registered and use of ARKTIS LINE sufficient) and T-209/09 *Alder*, EU:T:2011:169, [58] (HALDER registered and use of HALDER I, HALDER II etc sufficient) with R 89/2000-1 CAPTAIN (23 April 2001) (CAPTAIN registered and use of CAPTAIN BIRDS EYE insufficient).

17. It is also worth highlighting the recent case of T-615/20 *Mood Media v EUIPO*, EU:T:2022:109 where the General Court was considering whether the use of various marks amounted to the use of the registered mark MOOD MEDIA. It took the view that the omission of the word "MEDIA" would affect the distinctive character of the mark (see [61 and 62]) because MOOD and MEDIA were in combination weakly distinctive, and the word MOOD alone was less distinctive still."

40. In my view, the alterations identified above do not alter the distinctive character of the mark as registered because the verbal elements 'PEDIGREE' and 'FEED THE GOOD' remain two dominant and distinctive elements used in conjunction which are independently identifiable both in the registered form and in the actual use.

Extent of use

41. In his oral submissions, Mr Stobbs stated that the opponent's evidence establishes that the mark 'PEDIGREE. FEED THE GOOD', which is subject to proof of use, has been used in the UK since 2015 in relation to pet food. That is correct. Although most of the examples of use are either undated or dated after the relevant period, Mr Mayers said that the earlier marks have been consistently and continuously used in the UK since 2015 and the evidence as a whole supports his claim (which is unchallenged). This includes two online articles[7] from 2015 titled *"PEDIGREE BRAND AIMS TO "FEED THE GOOD" IN DOGS AROUND THE WORLD"* and *"PEDIGREE 'FEED THE GOOD': HOW ONE IDEA IS BEING INTERPRETED AROUND THE WORLD*" both of which confirm the launch of a global campaign based on the 'FEED THE GOOD' slogan.

[7] Exhibits 18-19

42. Although the evidence also points to the verbal element 'FEED THE GOOD' having been used as part of another slogan in relation to dogs adoption services, i.e. 'FEED THE GOOD. ADOPT.', that cannot count towards genuine use of the mark 'PEDIGREE. FEED THE GOOD' for the registered services in class 44, because (a) it is a different mark and (b) it has been used for animals' adoption services which, as I have already observed, are not the same as the registered *Providing information on pet health care and pet nutrition*. In this connection, whilst I note Mr Stobbs' submission that the mark 'PEDIGREE. FEED THE GOOD' has been used in the UK in connection with "*pet food and beverages; pet treats; pet chews; dental pet chews; the provision of information and advice in the fields of pet care, pet nutrition, and pet adoption; and promotional services aimed at promoting public awareness of pet adoption, responsible pet ownership and the proper care and treatment of pets",* there is no evidence that the opponent has provided services corresponding to the registered information and advice on pet healthcare and pet nutrition as separate services. If any advice or information has been provided by the opponent in relation to pet healthcare and pet nutrition, it has been in the context of supporting sales of, and promoting, its own pet food products not for the purpose of creating a share in the market for those services.

43. Nevertheless, I agree with Mr Stobbs that the length and continuity of use of the slogan mark 'PEDIGREE. FEED THE GOOD' (which covers the full five years relevant period) and its extent as demonstrated by (a) the UK sales figures which range between $250 and $320million per year in the 5 years prior to the relevant date; (b) the UK marketing figures which totals $28 million in the 5 years prior to the relevant date, and (c) the examples of use of the mark at points of sales, in promotional videos, and on the opponent's UK Amazon page and website, are sufficient to conclude that there has been genuine use of the first earlier mark in relation to pet food.

Fair specification

44. In *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited,* BL O/345/10, Mr Geoffrey Hobbs Q.C. as the Appointed Person summed up the law as being:

> "In the present state of the law, fair protection is to be achieved by identifying and defining not the particular examples of goods or services for which there has been genuine use but the particular categories of goods or services they should realistically be taken to exemplify. For that purpose the terminology of the resulting specification should accord with the perceptions of the average consumer of the goods or services concerned."

45. In *Merck KGaA v Merck Sharp & Dohme Corp & Ors* [2017] EWCA Civ 1834 the Court of Appeal set out the proper approach to partial revocation, as follows:

> "245. First, it is necessary to identify the goods or services in relation to which the mark has been used during the relevant period.
>
> 246. Secondly, the goods or services for which the mark is registered must be considered. If the mark is registered for a category of goods or services which is sufficiently broad that it is possible to identify within it a number of subcategories capable of being viewed independently, use of the mark in relation to one or more of the subcategories will not constitute use of the mark in relation to all of the other subcategories.
>
> 247. Thirdly, it is not possible for a proprietor to use the mark in relation to all possible variations of a product or service. So care must be taken to ensure this exercise does not result in the proprietor being stripped of protection for goods or services which, though not the same as those for which use has been proved, are not in essence different from them and cannot be distinguished from them other than in an arbitrary way.
>
> 248. Fourthly, these issues are to be considered having regard to the perception of the average consumer and the purpose and intended use of the products or services in issue. Ultimately it is the task of the tribunal to arrive at a fair specification of goods or services having regard to the use which has been made of the mark.

> 249. This approach does strike an appropriate balance. It gives effect to the clear intention of the EU legislature that marks must actually be used or, if not used, be subject to revocation. […] It is also fair to proprietors for it does not require a proprietor to prove that he has used his mark in relation to all possible variations of the goods or services covered by its registration but only those which are sufficiently distinct to constitute coherent categories or subcategories. I am also satisfied that it gives appropriate protection to the legitimate interest of a proprietor in being able in the future to extend his range of goods or services within the scope of the terms describing the goods or services for which its mark is registered."

46. This approach was approved by the Supreme Court in *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1)* [2024] UKSC 36, subject to the proviso that it must be seen in light of more recent guidance by the CJEU that that the essential criterion to apply for the purposes of identifying a coherent subcategory of goods or services capable of being viewed independently is their purpose and intended use (for example, *Ferrari SpA v DU* (Joined Cases C-720/18 and C-721/18) EU:C:2020:854; [2021] Bus LR 106, at paragraphs 36-53).

47. In *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool) & Ors* [2016] EWHC 3103 (Ch) at [47], the late Carr J pointed out that it is not the task of the court to describe the use made by the trade mark proprietor in the narrowest possible terms unless that is what the average consumer would do; for example, in *Pan World Brands v Tripp Ltd (Extreme Trade Mark)* [2008] RPC 2 it was held that use in relation to holdalls justified a registration for luggage generally.

48. As I have already addressed, Mr Stobbs conceded that there has not been use for some of the registered goods in class 31, claiming use for the following goods and services:

> **Class 31:** *cuttlefish bone; bones for dogs; edible chews for animals; products for animal litter; fresh fruits and vegetables; foodstuffs and beverages for animals, birds and fish*.

Class 44: *Providing information on pet health care and pet nutrition.*

49. The first thing to note is that the sales figures provided by Mr Mayers are not broken down by product. Consequently, I can only reach a conclusion based on types of goods shown in evidence. These are various types of pet food and treat products for dogs. Further, the fact that the opponent's brand 'PEDIGREE' is a dog food brand is also confirmed by the online article I mentioned (i.e. "PEDIGREE BRAND AIMS TO "FEED THE GOOD" IN DOGS AROUND THE WORLD") which refers to 'PEDIGREE' as a brand specifically offering products for dogs.

50. There is no evidence of use in relation to foodstuff for other types of animals, such as cuttlefish bone (which I understand is a type of bird food). The same goes for the other goods, namely *products for animal litter; fresh fruits and vegetables,* and services, in relation to which there is no evidence of use. Lastly, I consider that dog food would be viewed as an independent subcategory of food for animals by the average consumers as food for animals is specific to the type of animal and/or pet. Accordingly, I find that a fair specification is as follows:

Class 31: *bones for dogs; edible chews for dogs; foodstuffs and beverages for pet dogs*.

Section 5(2)(b)

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

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

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

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

52. 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*, [2025] UKSC 25:

> (a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors;
>
> (b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;
>
> (c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;
>
> (d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;
>
> (e) nevertheless, the overall impression conveyed to the public by a composite trade mark may, in certain circumstances, be dominated by one or more of its components;
>
> (f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

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

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

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

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense; and
(k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically linked undertakings, there is a likelihood of confusion.

Comparison of goods and services

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

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

(a) The respective uses of the respective goods or services;

(b) The respective users of the respective goods or services;

(c) The physical nature of the goods or acts of service;

(d) The respective trade channels through which the goods or services reach the market;

(e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be, found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;

(f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

55. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v OHIM,* Case T-325/06, 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 may think that the responsibility for those goods lies with the same undertaking."

56. In *Sanco SA v OHIM,* Case T-249/11, the GC indicated that goods and services may be regarded as 'complementary' and therefore similar to a degree in circumstances where the nature and purpose of the respective goods and services are very different. The purpose of examining whether there is a complementary relationship between goods and services is to assess whether the relevant public are liable to believe that responsibility for the goods and services lies with the same undertaking or with economically connected undertakings. As Mr Daniel Alexander QC

noted as the Appointed Person in *Sandra Amelia Mary Elliot v LRC Holdings Limited,* BL O/255/13*:*

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

57. Whilst on the other hand:

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

58. In *Gérard Meric v Office for Harmonisation in the Internal Market,* Case T- 133/05, the GC stated that:

> "29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut fur 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."

59. The competing goods and services are as follows:

The holder's goods	**The opponent's goods**
Class 31: *Pet birds; pet animals; pet food; pet birds; pet animals; pet beverages; pet foodstuffs; pet rabbit food; edible pet treats; beverages for pets; sand for pet toilets; powdered milk for pets; sanded paper [litter] for pets; aromatic sand [litter] for pets; edible*	**Class 31:** *bones for dogs; edible chews for dogs; foodstuffs and beverages for pet dogs*.
	Class 35: *Promotional services, namely, promoting public awareness of the need for adopting animals, pet adoption, responsible pet ownership and the proper care and treatment of pets;*

silvervine powder for pet cats; pet treats in the nature of bully sticks.	*business consulting services in the field of promoting the need for adopting animals, pet adoption, responsible pet ownership and the proper care and treatment of pets.*

60. The opponent's term *foodstuffs and beverages for pet dogs* is sufficiently broad to encompass the holder's *pet food; pet beverages; pet foodstuffs; edible pet treats; beverages for pets; powdered milk for pets; pet treats in the nature of bully sticks.* These goods are **identical** on the principle outlined in *Meric.*

61. Although the opponent's goods *foodstuffs for pet dogs* cover pet food for dogs and the applicant's goods *pet rabbit food* cover pet food for different pets, i.e. dogs versus rabbits, I find that the goods are similar to a medium degree insofar as they have a similar nature and purpose (i.e. goods used to feed pets), both being items of pet food, target the same users, i.e. pet owners, and are distributed through the same trade channels, i.e. pet shops, or are likely to be found in close proximity in supermarkets. However, the goods have different method of use and uses, and are neither in competition, nor complementary. These goods are similar to a **medium degree.**

62. I find that similar considerations apply to the applicant's *sand for pet toilets; sanded paper [litter] for pets; aromatic sand [litter] for pets; edible silvervine powder for pet cats.* These goods are mainly used by owners of cats for hygiene not for nutrition. Although the nature and purpose of these goods is different, i.e. goods used for nutrition for dogs and goods used for hygiene for cats, they are nevertheless, goods for pets, targeting pet owners and distributed through the same trade channels. These goods are similar to a **low to medium degree.**

63. In relation to *Pet birds; pet animals (repeated twice*) at the hearing Mr Stobbs identified the closest clash as being that with the opponent's *"services relating to adoption and promoting awareness of pet adoption"*. In this connection, Mr Stobbs stated that the goods and services are two sides of the same coin, because a consumer might decide to buy a pet, in which case the goods would be in class 31, or he might decide to adopt a pet, in which case the service being provided to the

consumer would be through a foundation or through a shelter. Mr Stobbs further argued that whilst the comparison is between goods and services, so that the nature is different, there is also a lot of similarity from a nature point of view "*because the end point of buying a pet is that you now have a pet, and the end point of there being a promotion of adoption is that you understand the channels through which you can adopt a pet"* and "*the end point is that you may decide to adopt a pet rather than buy a pet".* Lastly, Mr Stobbs said that the goods and services target the same audience, i.e. people who care about pets, and would share trade channels. Alternatively, Mr Stobbs said that the applicant's *pet birds; pet animals* are similar to the opponent's goods in class 31 relying on the fact that the opponent's Pedigree brand "*is used on both sides of this coin".* Mr Stobbs further stated that although the nature of food versus a live animal is different, there are two things that make them very closely related, including the fact that the consumer is the same, because the consumer who buys a pet also needs to buy pet food, and the fact that a consumer understands that he can obtain a pet from the same sort of companies who are involved in the products themselves.

64. I agree with Mr Stobbs that the applied-for *pet birds; pet animals* are similar to the opponent's goods in class 31 because they share the same specialist trade channels, although I reach the same conclusion for different reasons. From my experience, in fact, pet stores and garden centres also supply small pets, such as Guinea pigs, birds, tortoises and live fish for fish tanks (which are covered by the applied-for goods *pet birds; pet animals*), as well as selling pet food, including the opponent's foodstuff for dogs. However, since I have restricted the opponent's specification to foodstuff for dogs and since, from my experience, you cannot purchase or adopt a dog from a pet shop, the argument about consumer who buys a pet also needing to buy pet food, is not applicable here (because a consumer purchasing the applicant's pet birds would not buy the opponent's dog food and also because even considering that the applicant's *pet animals* include pet dogs, you would not get a pet dog from a shop selling dog food). Nevertheless, I find that the coincidence in trade channels is sufficient to find a low degree of similarity. These goods are similar to a **low degree**.

65. In so far as the second earlier mark's services are concerned I do not find any similarity between the contested goods in class 31 and the opponent's services in

class 35, namely *Promotional services, namely, promoting public awareness of the need for adopting animals, pet adoption, responsible pet ownership and the proper care and treatment of pets; business consulting services in the field of promoting the need for adopting animals, pet adoption, responsible pet ownership and the proper care and treatment of pets.* The nature, purpose, use and method of use of these services is different from that of the applied-for goods. The goods and services do not target the same users, the opponent's services in class 35 being business to business services directed at businesses who wish to promote pet adoption (for example as a marketing tool), rather than to consumers who wish to adopt a pet (and which are consumers of the applied-for goods in class 31). Finally, there is no complementarity, nor competition and the goods and services do not share distribution channels. These goods and services are dissimilar.

66. Under the present ground, a likelihood of confusion can only exist where there is at least some similarity between goods and services. This means that as a result of my findings above, the opposition based on the second earlier mark fails.[8]

Average consumer

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

68. In *Iconix Luxembourg Holdings SARL v Dream Pairs 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;

[8] *eSure Insurance v Direct Line Insurance,* [2008] ETMR 77 CA

(b) The average consumer provides a standard which enables the courts to strike a balance between the competing interests involved, such as trade mark owners, their competitors and consumers;

(c) The average consumer is neither a single hypothetical person nor a mathematical average; assessment from the perspective of the average consumer does not involve a statistical test. There is no single meaning rule and if, having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, a finding of infringement may properly be made;

(d) Assessment from the perspective of the average consumer is intended to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by and enabling courts and tribunals to determine such issues so far as possible without the need for evidence;

(e) The average consumer's level of attention varies according to the category of goods or services in question; and

(f) the average consumer rarely has the opportunity to make direct comparisons between trade marks (or between trade marks and signs) and must instead rely upon the imperfect picture of the trade mark they have kept in their mind.

69. The average consumer for the parties' goods in class 31 will be members of the general public who wish to purchase a pet (in relation to pet birds and pet animals) or own and care for pets (in relation to the other goods). The cost of the purchase is likely to vary depending on the type of pet (in relation to pet birds and pet animals) and on the quality of the ingredients used within the products (in relation to the other goods). With the exception of pet birds and pet animals which are an infrequent and quite expensive purchase, the goods will be reasonably inexpensive and likely to be purchased on a fairly frequent basis. Several factors may influence the average consumer when purchasing the goods, such as the seller's credential and animal

health (in relation to pet birds and pet animals) as well as the quality of the ingredients, and if the product is suitable for the particular type of animal (in relation to the other goods). Based on these factors, I find that the average consumer is likely to pay a high or medium level of attention respectively, when purchasing the goods.

70. The goods will be selected from breeders (in relation to pet birds and pet animals), as well as from specialist shops (such as pet shops), general retail outlets, or online. The customer will select the goods having seen the pet and having had a discussion with the seller/breeder (in relation to pet birds and pet animals); for the other goods the consumer will self-select the goods from the display shelves, or by selecting the image of their desired product if purchasing online. In relation to pet birds and pet animals aural and visual consideration are both important, whereas in relation to the other goods the visual component will dominate the purchasing process, although I do not discount aural considerations, such as word-of-mouth recommendations

Comparison of marks

71. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

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

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

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

The applied-for mark	The opponent's earlier mark
	PEDIGREE. FEED THE GOOD

73. The opponent's mark 'PEDIGREE. FEED THE GOOD' is a word-only mark. Within this mark, the sequence 'FEED THE GOOD' is independently distinctive; although it is semantically awkward, it is sufficiently grammatically structured that it will be perceived as a whole, that perception being assisted by the presence of the full stop. Within this mark, the word 'PEDIGREE' is placed at the beginning, the beginning of marks being where consumer's attention tends to focus. However, the phrase 'FEED THE GOOD' is longer, and even bearing in mind that the applicant has conceded the reputation (and enhanced distinctiveness) of the brand 'PEDIGREE', as I have said, the 'FEED THE GOOD' element is semantically awkward and is independently distinctive to a good degree also contributing to the overall impression.

74. The applied-for mark is a figurative mark consisting of the words 'FOOD FOR THE GOOD' with the words 'FOOD' and 'GOOD' being presented in larger letters, and the preposition 'FOR' and the article 'THE' being squeeze in smaller letters one above the other below the silhouette of a dog and a cat. Despite the different size of the letters, the words 'FOOD FOR THE GOOD' will be perceived as a unit, and it is the most distinctive element of the mark, although both the presentation of the letters and the figurative element contribute to the overall impression, but to a lesser degree.

Visual similarity

75. Visually, the applied-for mark and the first earlier mark 'PEDIGREE. FEED THE GOOD' share the identical words 'THE GOOD' which is placed at the end of both

marks. Whilst these marks present some differences in that (1) the earlier mark contains the word ‘PEDIGREE’ and a full stop which have no counterpart in the application, (2) the application contains the word ‘FOR’, a figurative element and a striking presentation that have no counterpart in the earlier mark, and (3) the words ‘FOOD’ (in the earlier mark) and ‘FEED’ (in the application) are not identical, the case law warns against an artificial dissection of the marks, and a granular analysis of the differences between the marks.

76. In my view, although the differences between the marks will be acknowledged by the average consumers, the phrases ‘FEED THE GOOD’ and ‘FOOD FOR THE GOOD’ create a highly similar overall impression, due to their similar structure and identical endings ‘THE GOOD’, the highly similar beginnings, i.e. ‘FEED’ versus ‘FOOD’, and the fact that the position of the differentiating word ‘FOR’ in the middle of the phrase ‘FOOD FOR THE GOOD’ is likely to result in this element being overlooked. Overall, I find that the marks are visually similar to a medium degree.

Aural similarity

77. Aurally, the words ‘FOOD FOR THE GOOD’ in the application and the words ‘FEED THE GOOD’ in the earlier mark will be pronounced in the usual way. These elements of the marks are aurally similar to a high degree. Nevertheless, the presence of the additional word ‘PEDIGREE’ in the earlier mark will reduce the overall similarity between the marks to a medium to high degree.

Conceptual similarity

78. In his skeleton argument, Mr Stobbs stated as follows:

> *“The respective marks carry the same or at least very highly similar conceptual meanings. They all in some way convey the idea that either food or the act of feeding is in some way good or beneficial to pet health and wellbeing, or, that 'THE GOOD' refers to the animals that the food in question is for. In each mark, there is a play on these words 'THE GOOD' which, in each sign, conveys this double meaning.*

It is noted that the Applicant in their submissions at paragraphs 7 and 9 has attempted to argue that the identical elements "THE GOOD" in the respective signs somehow refer to different things -- they argue that "THE GOOD" in the Opponent's Earlier Registrations refers to the "good side of the human" whereas "THE GOOD" in the Contested Mark is "clearly referring to the pets." There is simply nothing to indicate that "THE GOOD" in the Opponent's Earlier Registrations refers to "the good side of the human". On the contrary, given that both the Earlier Registrations and the Application cover goods/ services in the fields of pets generally, it simply cannot be the case that this identical element in the respective marks carries different meanings in each. Conceptually, in both the Earlier Registrations and the Contested Mark, "THE GOOD" is the subject matter of the mark, each with a reference to 'feeding' that subject. "THE GOOD" therefore has a double meaning within the respective signs and to this extent, they are conceptually identical.

79. I agree with Mr Stobbs. As I have said, the phrase 'FEED THE GOOD' is semantically awkward and does not convey a clear meaning. This is confirmed by an online article produced in evidence which discusses how the slogan 'FEED THE GOOD' has been interpreted for various markets, including Australia, New Zealand and China. The article suggests that 'FEED THE GOOD' hints at the idea that dogs are good for people and refer to a marketing campaign whereby this concept was developed through the following line: "*Dogs bring out the good in us" "Pedigree brings out the good in them. Feed the good."*

80. I am not convinced that without being educated with a marketing campaign which expands on the meaning of 'FEED THE GOOD', the consumer would understand the idea behind the slogan. More likely than not, the average consumer will be left with the recollection of two concepts, one related to feeding and one relating to the words 'THE GOOD' with the word 'GOOD' being perceived as a noun, i.e. something that is considered to be right according to moral standards or religious beliefs. In my view, the average consumer will understand the slogan 'FEED THE GOOD' within the mark 'PEDIGREE. FEED THE GOOD' as a unit, and will try to make sense of what 'THE GOOD' means and what is the good that must be fed.

81. Admittedly, whilst 'FOOD FOR THE GOOD' is grammatically awkward and will not convey a clear meaning, it is slightly more direct, due to the preposition 'FOR'. However, it will in my view convey the same meaning as that conveyed by the earlier mark, in that the average consumer will understand 'FOOD FOR THE GOOD' as a unit and will try to make sense of what 'THE GOOD' means and what is the good that the food is for.

82. Whilst both marks contain additional concepts, namely those introduced by the word 'PEDIGREE' in the earlier mark (which will be perceived as conveying the concept of animals of pure-bred) and the silhouette of a dog and a cat (in the application), that does not take away from the coincidence of the identical/highly similar concept conveyed by the phrases 'FEED THE GOOD' and 'FOOD FOR THE GOOD'.

Distinctive character of the earlier mark

83. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV,* Case C-342/97, the CJEU stated that:

> "22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *WindsurfingChiemsee* v *Huber and Attenberger* [1999] ECR I-0000, paragraph 49).
>
> 23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section

of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51)."

84. 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 or services, to those with high inherent distinctive character, such as invented words, which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use made of it.

85. I have already discussed the evidence above. In addition, the applicant has conceded that the mark 'PEDIGREE' benefits from reputation. For similar reasons to those I have set out when discussing genuine use, I find that the element 'PEDIGREE' of the first earlier mark has acquired an enhanced degree of distinctiveness through use in relation to the same good for which I found genuine use and it is distinctive to a high degree. As the mark 'PEDIGREE. FEED THE GOOD' will be perceived as a slogan mark from the brand 'PEDIGREE', it is, as a whole, distinctive to a high degree.

Likelihood of confusion

86. 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, including that a lesser degree of similarity between the respective marks may be offset by a greater degree of similarity between the respective goods and services and vice versa. I must keep in mind the distinctive character of the earlier mark, the average consumer for the goods and services and the nature of the purchasing process. I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

87. Confusion can be direct or indirect. In *L.A. Sugar Limited v By Back Beat Inc*, BL O/375/10, 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)."

88. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, 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."

89. It is not sufficient that a mark merely calls to mind another mark: *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17. This is mere association not indirect confusion.

90. Earlier in this decision I found that:

- The goods at issue are either identical or similar to a medium or a low degree.

- The average consumer of pet birds and pet animals will select the goods both visually and aurally with a high degree of attention. For the other goods, the purchase will be mainly visual, with a medium degree of attention being deployed.

- The application and the first earlier mark are visually similar to a medium degree and aurally similar to a medium to high degree. Conceptually, the phrases 'FEED THE GOOD' and 'FOOD FOR THE GOOD' in the respective marks are semantically awkward; nonetheless, they will both be perceived as units and the average consumer will, when faced with both, try to make sense of what 'THE GOOD' means and what is 'THE GOOD' that must be fed (in the earlier mark), or what is 'THE GOOD' that the food is for (in the application). Accordingly, the marks share an identical or highly similar concept.

- The earlier mark 'PEDIGREE. FEED THE GOOD' is distinctive to a high degree as a result of the use made.

91. Before I draw my conclusions on the likelihood of confusion, I must address an issue first. At the hearing, Mr Stobbs referred to the EUIPO decision in opposition no. B3216243, concerning the same mark, same parties and same issues as those involved in the present decision. Mr Stobbs confirmed that the EUIPO decision had been issued in July 2025, however, no copy had been filed prior to the hearing. Upon my request, Mr Stobbs duly filed a copy of the EUIPO decision, copying the applicant in and confirming that it had been brought to my attention. I have read the EUIPO decision, however, as I confirmed to Mr Stobbs at the hearing, I am not bound by it; in addition, that decision disregards the evidence filed and proceeds on the basis that the opponent's earlier mark is weakly distinctive, which is a different conclusion from that I have reach here. Accordingly, I give no weight the EUIPO decision.

92. Having considered all of the relevant factors, I am of the opinion that even if the visual differences between the marks are sufficient to prevent the likelihood of direct confusion, the similarities between the slogans 'FEED THE GOOD' and 'FOOD FOR THE GOOD' in the respective marks is likely to result in the consumer misremembering or mixing the two, and being indirectly confused. In this connection, I agree with Mr Stobbs that the absence of the distinctive word 'PEDIGREE' in the applied-for mark is incapable of preventing the likelihood of confusion, as the element 'FEED THE GOOD' is independently distinctive within the opponent's mark, and the average consumer encountering the applicant's mark on identical or similar goods is likely to conclude that it is the opponent's slogan which is used by the opponent without the main brand 'PEDIGREE'. In this connection, I should also mention that whilst 'FEED THE GOOD' has been used, and will be perceived, as a slogan, it is sufficiently distinctive to denote origin.

93. There is a likelihood of indirect confusion. The opposition based on Section 5(2)(b) is successful in its entirety.

Section 5(3)

94. Section 5(3) states:

> "(3) A trade mark which-

is identical with or similar to an earlier trade mark, shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark".

95. In *General Motors,* Case C-375/97, the CJEU held that:

"25. It cannot be inferred from either the letter or the spirit of Article 5(2) of the Directive that the trade mark must be known by a given percentage of the public so defined.

26. The degree of knowledge required must be considered to be reached when the earlier mark is known by a significant part of the public concerned by the products or services covered by that trade mark.

27. In examining whether this condition is fulfilled, the national court must take into consideration all the relevant facts of the case, in particular the market share held by the trade mark, the intensity, geographical extent and duration of its use, and the size of the investment made by the undertaking in promoting it.

28. Territorially, the condition is fulfilled when, in the terms of Article 5(2) of the Directive, the trade mark has a reputation 'in the Member State'. In the absence of any definition of the Community provision in this respect, a trade mark cannot be required to have a reputation 'throughout' the territory of the Member State. It is sufficient for it to exist in a substantial part of it."

96. At the hearing Mr Stobbs identified the opponent's best case as being based on the mark 'PEDIGREE. FEED THE GOOD' and reputation being established in relation to "pet food". Mr Stobbs also said that all of the comments about the similarity and the likelihood of confusion apply to the Section 5(3) ground. This means that the opponent's case based upon Section 5(3) does not add much to the Section 5(2)(b) ground, insofar as I agree with Mr Stobbs that the reputation having been conceded

and established in relation dog food, and having concluded that there is a likelihood of confusion for identical and similar goods, link and damage are made out.

97. The opposition based on Section 5(3) is also successful.

OUTCOME

98. The opposition has been successful under all grounds and the applied-for mark will be refused registration.

COSTS

99. The opponent has been successful and is, therefore, entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 1/2023. In the circumstances, I award the opponent the sum of £2,100 as a contribution towards the costs of proceedings. The sum is calculated as follows:

> Filing a notice of opposition and considering the counterstatement: £400
> Filing evidence: £700
> Attending a hearing: £800
> Official Fees: £200
> Total: £2,100

101. I therefore order SILVERSKY PTE. LTD. to pay Mars Petcare UK the sum of £2,100. 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 8th day of May 2026

TERESA PINTO
For the Registrar