

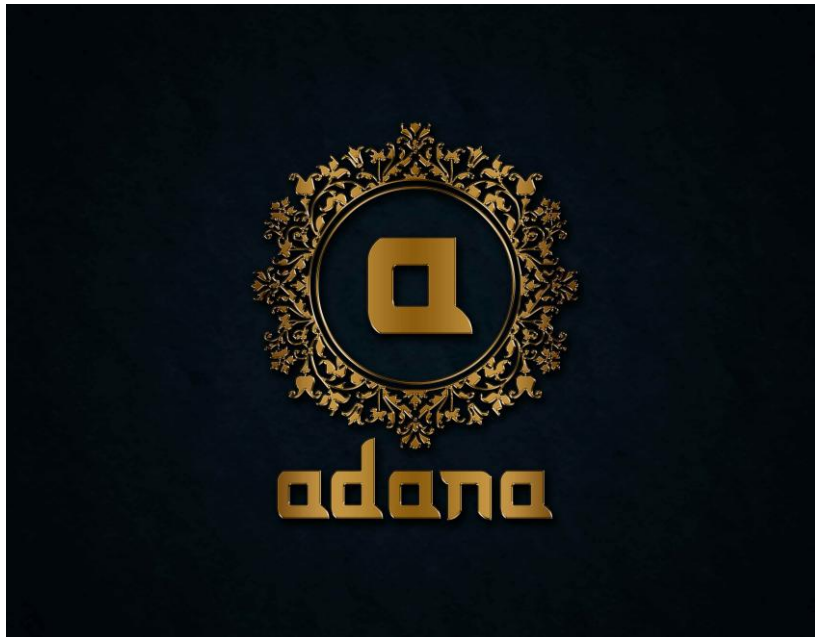
O/0535/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00004076888

IN THE NAME OF ADNAN SAMIN

TO REGISTER THE FOLLOWING TRADE MARK:



IN CLASS 43

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NO. OP000451702**

BY MOHAMMED MOSTAFIZUR RAHMAN

Background and pleadings

1. On 17 July 2024, Adnan Samin ("***the Applicant***") applied to register the trade mark shown on the cover page of this decision in the UK. The application was accepted and published in the Trade Marks Journal on 11 October 2024 in respect of services in class 43 as indicated below in this decision ("***the Contested Mark***").
2. On 6 January 2025, Mohammed Mostafizur Rahman ("***the Opponent***") opposed the application in full under sections 5(1), 5(2)(a) and 5(2)(b) of the Trade Marks Act 1994 ("***the Act***"). The Opponent relies upon the following trade mark ("***the Earlier Mark***"):



Representation:

UK Registration no. UK00003996565

Filing date: 29 December 2023

Date of registration: 5 April 2024

Relying upon the following goods and services:

Class 20: Dining tables.

Class 21: Serving dishes.

Class 29: Cooked seafood.

Class 39: Delivery of food by restaurants.

Class 43: Restaurants; Grill restaurants.

3. By virtue of its earlier filing date, the above registration constitutes an earlier mark within the meaning of section 6 of the Act. As the earlier mark had not completed its registration process more than five years before the filing date of the application in issue, it is not subject to the use provisions contained in section 6A of the Act. The Opponent can, therefore, rely upon all of the goods and services it has identified without having to demonstrate use of the mark.
4. In its statement of grounds, the Opponent contends that the identity or similarity between the marks creates a likelihood of confusion among consumers including a likelihood of association.
5. On 31 March 2025, the Applicant filed a counterstatement contending that the competing marks are different. The Applicant submits that *"WE STRONGLY BELIEVE THAT, JUST LIKE MILLIONS OF OTHER BUSINESSES OUR BUSINESS IS PROVIDING SAME FOODS SERVICES INCLUDING DINE IN, TAKEAWAYS AND DELIVERIES TO THE CUSTOMER END"*. Therefore, the Applicant seems to admit that there is identity between the services at hand. However, it goes on to say that *"WE DISAGREE ALL THE CONCERNS RAISED FROM OPPOSITION AND READY TO DEFEND OUR TRADE MARK IN ALL ASPECTS."* This could perhaps be read as a blanket denial of the Opponent's claims including any similarity between the services in class 43.
6. During the evidence rounds, the Applicant filed evidence in the form of a witness statement by Adnan Samin (i.e., the Applicant), dated 15 October 2025. Neither party requested a hearing nor filed submissions in lieu of a hearing. This decision is taken following careful consideration of the papers.
7. Neither party is legally represented.
8. 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 matters

Alleged actual confusion

9. The Opponent contends, in his statement of grounds, that the use by the Applicant of the Contested Mark has erroneously led the relevant consumers to believe that the two brands are the same or economically associated.
10. On the point of actual confusion, I note the comments of Kitchen LJ (as he then was) in the case of *Roger Maier and Another v ASOS*, [2015] EWCA Civ 220. While the relevant discussion in that case surrounded the lack of confusion in the marketplace, he did state that:

“80. [...] the likelihood of confusion must be assessed globally taking into account all relevant factors and having regard to the matters set out in *Specsavers* at paragraph [52] and repeated above. If the mark and the sign have both been used and there has been actual confusion between them, this may be powerful evidence that their similarity is such that there exists a likelihood of confusion.”

11. The Opponent has not filed any evidence in support of its claim of actual confusion. Therefore, I will not take into account this claim of actual confusion in my assessment.

Section 5(3) and 3(6) claims

12. In his statement of grounds, the Opponent describes the parties' economic relationship prior to the filing of the Contested Mark as well as the Applicant's commercial behaviour. The Opponent also states that “[...] *By retaining the name “Adana” and leveraging my branding’s reputation, the applicant is misleading the public and benefiting from my established brand. This behaviour is detrimental to my business.*”
13. The Opponent's consideration of matters such as those reproduced above is noted but nonetheless appear more consistent with section 5(3) and 3(6) claims. For clarity, sections 5(1), 5(2)(a) and 5(2)(b) are the only pleaded grounds in the present proceedings and, in the absence of a direct pleading and any supporting

evidence, the scope of the opposition does not extend, for example, to grounds such as section 5(3) or 3(6) of the Act.

Party argues they market the mark differently from the other party

14. The Applicant contends that “[...] *the restaurant sector, particularly Turkish fusion restaurants, necessarily involves offering menus with similar dishes. Such overlap is normal and does not, in itself, create a likelihood of confusion between businesses. The distinguishing factor between restaurants is not the similarity of their cuisine, but the branding, style, presentation, and customer experience associated with each establishment*”.¹

15. In this regard, I am required to make the assessment of the likelihood of confusion notionally and objectively based on the Opponent’s goods and services, as registered, and the Applicant’s services, as applied for, in accordance with the relevant case law. That assessment requires that I must not take into account the actual way that either party has used their marks in the marketplace or the kinds of goods or services that those marks have been used in relation to thus far. Rather, I must consider all of the circumstances in which the mark applied for might be used if it were registered. This is because trade mark registrations are items of property which may be sold by the applicants and/or opponent to third parties in the future and may therefore be used in a different way, or upon/in relation to different goods or services, than those used by the current proprietors of those marks. In this connection, in *Devinlec Développement Innovation Leclerc SA v Office for Harmonization in the Internal Market (Trade Marks and Designs) (“OHIM”)*, Case C-171/06P, the Court of Justice of the European Union (“CJEU”) stated:

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

¹ Mr Samin’s witness statement at [4].

those circumstances into account in the prospective analysis of the likelihood of confusion between those marks.”

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

Decision

Sections 5(1) and 5(2)(a)

17. Sections 5(1) and 5(2)(a) of the Act read as follows:

“5 (1) A trade mark shall not be registered if it is identical with an earlier trade mark and the goods or services for which the trade mark is applied for are identical with the goods or services for which the earlier trade mark is protected.

(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, or

(b) [...]

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

18. As per the legislation set out above, in order for an opposition to succeed under sections 5(1) and 5(2)(a), the marks must be identical. In *SA Société LTJ Diffusion v Sadas Vertbaudet SA*, Case C-291/00, the CJEU held that:

“54. [...] a sign is identical with the trade mark where it reproduces, without any modification or addition, all the elements constituting the trade mark or where, viewed as a whole, it contains differences so insignificant that they may go unnoticed by an average consumer.”

19. The respective marks are shown below:

Earlier Mark	Contested Mark
	

20. The Earlier Mark features a golden figurative device contained in an incomplete circle with the word “adana” placed underneath in smaller size. Looking at the mark as a whole, the consumers are likely to perceive the figurative device as a stylised letter “a” as this is identically reproduced in the word “adana” below. The Contested Mark shows a stylised letter “a” contained in a closed circle with a floral frame around it. Underneath the mark features the word “adana” in smaller size. Both marks are placed on a black background and are in different shades of gold (the Earlier Mark is shinier, and the Contested Mark is in matt or “old” gold). The respective marks feature figurative and stylistic differences for which they cannot be considered to be identical. The opposition under section 5(1) and 5(2)(a) fails. I will therefore proceed with my assessment under section 5(2)(b).

Section 5(2)(b)

21. 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”.

22. Section 5A of the Act states that:

“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.”

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

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

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

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

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

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

(f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

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

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

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

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

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

Comparison of goods and services

24. In comparing the respective specifications, all relevant factors should be considered, as per *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, where the CJEU stated at paragraph 23 of its judgment:

“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.”

25. 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.

26. 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”.

27. In *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1)* [2024] UKSC 36, Lord Kitchin set out the proper approach to considering terms in specifications:

“365. [...] The correct approach, as a matter of principle, in considering a specification of services which is defined by terms which are not clear or precise, is to confine the terms used to the substance or core of their possible meanings: see, for example, *Reed Executive plc v Reed Business Information Ltd* [2004] EWCA Civ 159; [2004] RPC 40, at para 43. So too, if a specification

of goods is defined by terms which are ambiguous, then it should be confined to those goods which are clearly covered. These principles are consistent with first, the requirement that the specifications of goods and services must be clear and precise so that others know what they can and cannot do; and secondly, general fairness because any ambiguity is the responsibility of the owner of the mark. If despite this, the words used are still unclear so that they cannot be interpreted, then it is permissible to disregard them. But, in my opinion, that will rarely be the case.”

28. In *Avnet Incorporated v Isoact Limited* [1998] FSR 16, Jacob J (as he then was) said at [19]:

“[...] definitions of services ... are inherently less precise than specifications of goods. [...] In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase.”

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

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

Opponent's goods and services	Applicant's services
<u>Class 20</u>	<u>Class 43</u>

Dining tables. <u>Class 21</u> Serving dishes. <u>Class 29</u> Cooked seafood. <u>Class 39</u> Delivery of food by restaurants. <u>Class 43</u> Restaurants; Grill restaurants.	Grill restaurants; Catering of food and drinks; Catering (Food and drink -); Food and drink catering; Catering of food and drink; Serving food and drinks; Serving food and drink for guests in restaurants; Food and drink catering for banquets; Preparation of food and drink; Preparation of food and beverages; Provision of food and drink in restaurants; Take-away food and drink services; Takeaway food and drink services; Fast food restaurants; Serving food and drink for guests; Serving food and drink in restaurants and bars; Serving food and drink in doughnut shops; Providing food and drink for guests in restaurants; Food preparation; Decorating of food; Food and drink catering for institutions; Food sculpting; Services for the preparation of food and drink; Food and drink preparation services; Catering for the provision of food and drink.
---	--

31. As pointed out at paragraph [5] above, the Applicant seems to admit that there is identity between the services at hand, but then goes on to make what could be construed as a blanket denial of the Opponent's claims.

32. As a preliminary point, in approaching my comparison, I bear in mind the following dicta of Mr Iain Purvis K.C., sitting as the Appointed Person, in the decision BL O/0911/24 *SMARTX*:

"9. In a case like this where the marks cover a multitude of different goods, it is obviously necessary for the Opponent to identify with precision, both in its pleaded case and in any submissions made to the Registry, which goods of its

own registrations are alleged to be similar to which goods of the Application. If this is not done, it is unfair to the Applicant and it is extremely difficult if not impossible for the Hearing Officer to decide the case.

[...]

28. [...] As I have said, it is for the Opponent to put forward the combinations of goods on which it relies for similarity (or identity). If it fails to identify a particular combination, it cannot expect the Hearing Officer to do the job for it. The approach for which Mr Wood contends would place an intolerable burden on Hearing Officers in cases of this nature in which there will be thousands of potential combinations of goods which could be relied on, and for each combination a slightly different argument for similarity could be made. Furthermore, such an approach would be unfair on the Applicant for the mark, since they will have had no opportunity to address points on similarity taken by the Hearing Officer if those points are not first raised by the Opponent.”

33. The Opponent did not provide any submissions on the potential similarity (or identity) between the goods and services at hand. In the absence of any guidance as to the particular points of similarity, I will make my comparisons based on my own understanding of the terms.

Class 43

- *“Grill restaurants”*

34. The above term is identically reproduced in the Opponent’s specification. Thus, the terms are identical.

- *“Catering of food and drinks; Catering (Food and drink -); Food and drink catering; Catering of food and drink; Food and drink catering for banquets; Food and drink catering for institutions; Catering for the provision of food and drink”*

35. With catering services, food/drinks are often served at a location different from where they are prepared and they are generally provided for specific events such

as public events or private events of different nature such as, for example, meetings or parties, to satisfy the clients' specific needs.

36. In relation to the Opponent's "*restaurants*" services, the respective services share the same nature (preparation and provision of food and drinks) and intended purpose (providing customers with food/drinks) although they differ in their method of use. I find the services do not share the same end consumers and are unlikely to be in competition with each other. Nonetheless, often restaurants also provide catering services as they have the infrastructure to do so, therefore, the respective services overlap in their providers and share the same trade channels. Overall, I find the services have at least a medium degree of similarity.

- "*Preparation of food and drink; Preparation of food and beverages; Food preparation; Services for the preparation of food and drink; Food and drink preparation services; Serving food and drinks; Serving food and drink for guests in restaurants; Serving food and drink for guests; Serving food and drink in restaurants and bars; Providing food and drink for guests in restaurants; Provision of food and drink in restaurants; Fast food restaurants*"

37. The Applicant's above services essentially consist of preparation and serving of food and drinks in general including in restaurants (including fast-food restaurants) and bars. The Opponent's "*Restaurants*" services involve the preparation, cooking and sale of food and beverages, together with their service to customers for immediate consumption on the premises. Overall, I find the Applicant's terms to include the Opponent's restaurant services. Thus, the respective services are identical in line with *Meric*.

- "*Serving food and drink in doughnut shops*"

38. Doughnut shops are establishments engaged in the preparation and retail sale of doughnuts and commonly the serving of drinks such as coffee, often for consumption on or near the premises. In relation to the Opponent's "*Restaurants*", the respective services share the same nature, intended purpose and method of use insofar as the respective services involve the preparation and serving of food and drink, are directed towards supplying edible goods and beverages to

customers and are delivered within a comparable hospitality setting. I find that the services are unlikely to target the same end users and be in competition with each other in that consumers who intend to purchase a doughnut will not go to a restaurant. Overall, I find the respective services have at least a below-medium degree of similarity.

- “*Take-away food and drink services; Takeaway food and drink services*”

39. The Opponent’s “*Restaurants*” services involve the preparation, cooking and sale of food and beverages also for takeaway. Therefore, I find it encompasses the Applicant’s above term and they are *Meric* identical.

- “*Decorating of food; Food sculpting*”

40. Food sculpting and decoration services concern the artistic preparation and visual enhancement of food items, focusing on the presentation rather than the provision of meals. Regarding the Opponent’s “*Restaurants*”, the overlap between the services lies primarily in the fact that both involve the handling and preparation of food and are connected to the food and beverage sector. However, the nature, intended purpose and method of use of the services differ. Restaurant services are directed towards the provision of edible goods for consumption, with consumers expecting prepared meals and drinks within a service environment. In contrast, food sculpting and decoration services are directed towards aesthetic or decorative outcomes, often for display or event presentation. I also find that although the services may share the same trade channels (e.g., consumers may obtain food sculpting/decoration services from pastry chefs in restaurants), I do not believe these services are in competition with each other or target the same consumers. Overall, I find only a low degree of similarity.

Average consumer and the purchasing act

41. It is necessary for me to determine who the relevant consumer is for the services in question. I must then determine the manner in which the services are likely to be selected by the relevant consumer in the course of trade.

42. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97.
43. 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.

44. The services at issue generally consist of the preparation and provision of food and drinks ranging from restaurants (including fast-food restaurants, bars and doughnut shops) and catering services to more specialised services such as food sculpting/decorating. All these services will be selected by members of the general public at large. I appreciate that also businesses could purchase services such as catering or food sculpting/decorating and pay a higher degree of attention as the purchase would form part of their professional activity. Nonetheless, the likelihood of confusion must be assessed from the perspective of the former (the general public) since they are the group who will pay the lower degree of attention.²

45. The services will be selected on a fairly frequent basis and will range in cost from cheaper services (such as fast-food restaurants, for example) to relatively expensive services (such as high-end restaurants or catering services). The factors that the consumer will consider when selecting the services will involve considerations as to the available selection of food and drink, dietary requirements, reviews and hygiene ratings. Even where the services at issue are expensive, I am of the view that the factors considered will remain relatively ordinary. As such, I am of the view that the services will be selected with a medium degree of attention, regardless of their price.

46. The services will be selected after the consumer views signage on the high street, promotional materials or after undertaking internet searches. As a result, I find that the selection process will be primarily visual but I do not discount an aural component playing a role by way of word-of-mouth recommendations.

Comparison of the marks

47. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and

² Case T-356/14, [25] – [26].

conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by the trade 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.”

48. 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.

49. The respective trade marks are shown below:

Earlier trade mark	Contested trade mark
	

Overall impression

50. The Earlier Mark features a figurative device placed at the centre of the mark rendered in a textured gold colour. The device has smooth curves and sharp edges, and it is surrounded by a semi-circular gold arc, forming an incomplete ring, that frames the top half of the logo. The arc is composed of a thicker outer band

and a thinner inner dotted line. Below the central symbol and figurative device is the text “adana”, written in a stylised, geometric font and in smaller size. The lettering is also gold, matching the device and arc, and features the same typeface as the figurative device above. The figurative device, the incomplete ring and the word “adana” are placed on a black background. The consumers’ eye is naturally drawn to the elements of the mark that can be read,³ namely, “a” and “adana”. Because the central device would be read as a letter “a” which reinforces the word “adana”, I think it would play a roughly equal role with the word “adana” in forming the overall impression made by the mark, the relatively unremarkable figurative arc and the black background play a lesser role.

51. The Contested Mark features a bold, geometric symbol resembling a stylised lowercase “a”, with a squared inner cut-out. The stylised “a” is positioned inside a circular frame with floral and leaf-like motifs. Below the emblem appears the smaller word “adana”, written in a bold, stylised, geometric typeface. All the elements in the mark are rendered in the same matt or “old” gold colour and are placed on a black background. The mark’s edges on the side are shaded as giving the impression that the mark disappears into (or emerges from) the “darkness” of the background. As found for the Earlier Mark, the consumers’ attention will be drawn to the letter “a” and the word “adana” that can be read. Because the central device would be read as a letter “a” which reinforces the word “adana”, I think it would play a roughly equal role with the word “adana” in forming the mark’s overall impression. The relatively unremarkable figurative circle with the floral and leaves motif as well as the black background play a lesser role.

Visual similarity

52. Both marks share a stylised figurative device with a circular frame around it and the word “adana” placed underneath in smaller size. Both marks have a gold metallic-like colour although in different shades. In both marks the figurative device is also reproduced as the letter “a” in their respective word “adana”.

53. The marks differ in the circular frame around the stylised “a”. The Earlier Mark features an incomplete ring formed by a combination of a continuous outer single

³ *Migros-Genossenschafts-Bund v EUIPO*, T-189/16, [52].

line and an inner dotted line. The Contested Mark features a closed circle with a floral and leaves motif around it. Both marks have the same black background.

54. Overall, I find the marks have a high degree of visual similarity.

Aural similarity

55. Looking at the marks as a whole, I find that the relevant consumers will perceive the figurative device at the centre of the mark as a stylised “a” that is then also reproduced in the word “adana” underneath as all have the same font and stylisation. Therefore, even though the larger letter “a” could be said to be there simply to reinforce the full word “adana”, I remind myself of the *Purity Hemp Company* case, BL O/115/22, whereby elements are generally only aurally invisible if they are negligible and I find that the relevant consumers are likely to voice both marks as the letter “a” and then the three-syllable word “adana”. I do not have submissions from the parties on this point, but I find that irrespective of how the consumers will pronounce “adana”, the pronunciation of this word will be the same in both marks. The figurative elements in both marks (i.e., the golden incomplete ring and the circle with floral/leaves motif) will not be pronounced. Overall, the marks are aurally identical.

Conceptual similarity

56. The parties did not provide me with any submissions on the potential meaning of “adana”. This word does not seem to have any meaning. Although both marks share the representation of the alphabet letter “a”, this letter simply serves to reinforce the word “adana” as the first letter of that meaningless word. I find the marks to be conceptually neutral.

Distinctive character of the earlier trade mark

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

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

58. Registered trade marks possess varying degrees of inherent distinctive character. These range from the very low, such as those which are suggestive or allusive of the services, to those with high inherent distinctive character, such as invented words.

59. Although the distinctiveness of a mark may be enhanced as a result of it having been used in the market, the Opponent has filed no evidence of use of its mark. Accordingly, I have only the inherent position to consider.

60. The Earlier Mark features a stylised letter “a” in combination with a circular frame featuring floral and leaf-like motifs and the word “adana”. This word will be perceived by the relevant public as an invented or foreign word devoid of any clear meaning and/or semantic correlation with the goods and services for which the mark is registered. Overall, I find the mark has a high distinctive character.

Likelihood of confusion

61. There is no simple formula for determining whether there is a likelihood of confusion. The factors considered above have a degree of interdependency (*Canon* at [17]). I must make a global assessment of the competing factors (*Sabel* at [22]), considering the various factors from the perspective of the average consumer and deciding whether the average consumer is likely to be confused. In making my assessment, I must keep in mind 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 he has retained in his mind (*Lloyd Schuhfabrik* at [26]).
62. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other (*L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10).
63. I have found the respective services' degree of similarity to range from low to identical. The level of attention of the relevant consumer is medium. The distinctiveness of the Earlier Mark is high. The visual similarity is high, and the marks are conceptually neutral and aurally identical. The purchase of the contested services is considered to be mainly visual but the potential for aural use is borne in mind. The respective marks overlap in their stylised letter "a" and the word "adana". The marks have only slightly different stylisations with both fonts being squared off. Although the respective marks feature different figurative elements (i.e., the incomplete circle in the Earlier Mark and the circular frame with a floral/leaves motif in the Contested Mark as well as different shades of gold) they play a lesser role in the marks' overall impression. Therefore, bearing in mind the principle of imperfect recollection, the marks' overall impression, the Earlier Mark's high distinctiveness and the consumers' medium level of attention, it is my view that the respective marks' differences in stylisation would be easily misremembered or mis-recollected. Hence, it would be easily foreseeable for the consumer to directly confuse the marks. I find direct confusion is likely to occur. I reach the same conclusion also for those services that have been found to be of low or below-medium similarity.
64. In case I am mistaken and the relevant consumers will notice the differences between the marks, I turn to consider the likelihood of indirect confusion. The

concept of indirect confusion was described in the following terms by Iain Purvis Q.C. sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10:

“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)”.

65. These three categories are not exhaustive; rather, they were intended to be illustrative of the general approach, as has been confirmed by the Court of Appeal.⁴ I recognise that a finding of indirect confusion should not be made merely because the competing marks share a common element. In this connection, it is not sufficient that a mark merely calls to mind another mark: this is mere association not indirect confusion.⁵ The Court of Appeal has also emphasised that, where there is no direct confusion, there must be a “proper basis” for finding indirect confusion.⁶
66. The marks have a quite similar overall impression: a stylised device placed at the centre of the mark that is reproduced like the letter “a” in the word “adana” underneath; such stylised “a” is contained in a circular frame (whether complete or incomplete). Both marks also have the same gold metallic-like effect (although they differ in their respective shade of gold) and are placed on a black background. It is my view that the average consumer will perceive the variation in stylisation in the Contested Mark merely as a brand variant or sub-brand of the Opponent’s “a – adana” mark. To my mind, consumers will not see “a – adana” (along with the circular device) used on different marks in relation to identical services or services of medium similarity and put it down to mere coincidence. Rather, they are far more likely to assume a connection between the two undertakings and will simply consider that the different elements in the Contested Mark are simply an alternative stylistic variation of the Earlier Mark being used by the same or economically linked undertaking. As a result, bearing in mind the Earlier Mark’s high distinctive character and that the purchase of the services at hand will be mainly visual, I find there to be a likelihood of indirect confusion. In light of the interdependency principle, I reach the same conclusion also in relation to those services for which I found only an at least below-medium level of similarity or a low degree of similarity.

Conclusion

67. The opposition under section 5(2)(b) succeeds in full and the application, subject to any appeal, will be refused for all the services in class 43.

⁴ *Liverpool Gin Distillery and others v Sazerac Brands, LLC and others* [2021] EWCA Civ 1207.

⁵ *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17.

⁶ *Liverpool Gin Distillery*.

Costs

68. The Opponent has been successful and was entitled to submit a claim for costs as a litigant in person. However, Mr Rahman was sent a blank costs pro forma by the Tribunal when it sent its letter concluding the evidence rounds on 7 January 2026, but has not submitted a costs claim. As such, I make no costs award.

Dated this 27th day of June 2026

Andrea Rossi

For the Registrar