

**O/0563/26**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF UK TRADE MARK APPLICATION NUMBER 4127505**

**BY AHMAD SALAH**

**FOR THE FOLLOWING TRADE MARK:**

**roots**

**IN CLASS 30 AND 43**

**AND**

**IN THE OPPOSITION THERETO UNDER NUMBER 452322**

**BY CROSS SPADES LIMITED**

## **BACKGROUND & PLEADINGS**

1. On 21 November 2024, Ahmad Salah (“the applicant”) applied to register the trade mark shown on the cover page of this decision in the United Kingdom (“the contested mark”). The contested mark was published for opposition purposes in the Trade Marks Journal on 6 December 2024 in respect of the following goods and services:

**Class 30:** Coffee; Decaffeinated coffee; Chocolate coffee; Mixtures of malt coffee with coffee; Caffeine-free coffee; Coffee extracts for use as substitutes for coffee; Coffee essences for use as substitutes for coffee; Coffee substitutes [artificial coffee or vegetable preparations for use as coffee]; Malt coffee; Flavoured coffee; Coffee bags; Coffee flavorings; Mixtures of malt coffee extracts with coffee; Instant coffee; Freeze-dried coffee; Coffee flavourings; Coffee oils; Espresso; Sugar-coated coffee beans; Coffee extracts; Drip bag coffee; Substitutes (Coffee -); Coffee substitutes; Coffee essences; Mixtures of coffee; Coffee mixtures; Chicory for use as substitutes for coffee; Cappuccino; Chicory [coffee substitute]; Coffee concentrates; Mixtures of coffee and chicory; Coffee, teas and cocoa and substitutes therefor; Mixtures of malt coffee with cocoa; Mixtures of coffee essences and coffee extracts; Powdered coffee in drip bags; Coffee essence; Malt coffee extracts; Mixtures of coffee and malt; Chai tea; Tea; Tea beverages with milk; Chocolate bark containing ground coffee beans.

**Class 43:** Coffee shops; Coffee shop services; Coffee bar services; Leasing of coffee makers; Serving food and drink in doughnut shops; Providing food and drink in doughnut shops.

2. On 3 February 2025, the contested mark was opposed by Cross Spade Limited (“the opponent”). The opposition is brought under Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”).<sup>1</sup>

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<sup>1</sup> The opposition was also initially brought under section 5(3) of the Act. However, in its letter dated 6 May 2025 the opponent formally withdrew this ground from its opposition. The opposition therefore is to proceed under Section 5(2)(b) only.

3. For the purposes of its opposition, the opponent relies upon the following marks (together the “earlier marks”):

(i) Trade mark number UK00916921066 (“the 066 mark”)<sup>2</sup>:

Filing date: 27 June 2017

Registration date: 14 November 2017

Relying on goods and services underline in Annex 1 of this decision.

Representation: STRONG ROOTS

(ii) Trade mark number UK00003686735 (“the 735 marks”):

Filing date: 26 August 2021

Registration date: 10 December 2021

Relying on all goods and services underline in Annex 2 of this decision.

Representation:<sup>3</sup>

1 of 3:



2 of 3:



3 of 3:

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<sup>2</sup> This mark is a comparable mark and so retains the filing date of the EU trade mark from which it was created.

<sup>3</sup> This mark is registered as a series of 3 marks.



4. An earlier trade mark is defined in section 6 of the Act, the relevant parts of which state:

“(6)(1) In this Act an “earlier trade mark” means –

a registered trade mark or international trade mark (UK) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks.

5. The marks identified in paragraph 3 qualify as earlier trade marks under the above provisions. The 735 marks had not been protected for more than five years at the date of the application for the contested mark and so, in accordance with section 6A of the Act, the marks are not subject to proof of use. The earlier 066 mark had, however, been registered for more than five years at the date of the application for the contested mark and so, in accordance with section 6A of the Act, the applicant could have requested proof of use of this from the opponent. It is noted that the applicant did request such proof of use in relation to a limited number of the goods and services in the opponent’s specification (namely, in relation to the earlier 066 mark’s class 30 “coffee, tea, cocoa and artificial coffee” goods, and class 43 “cafes; restaurants; food and drink catering” services). However, in a letter to the Tribunal dated 6 May 2025, the opponent confirmed that it would no longer be relying on these goods and services for the purpose of its opposition. As no request for proof of use was made in respect of the remaining goods and services in the opponent’s specification, the opponent may rely on all of the goods and services underlined in Annex 1 for the purposes of this opposition.

6. The opponent claims that the marks in issue are “highly similar” and that the goods and services in issue are “identical and/or similar”. Consequently, the opponent submits that there is a likelihood of confusion on the part of the public, including a likelihood of association, contrary to section 5(2)(b) of the Act.
7. The applicant denies that the marks in issue are similar. Specifically, the applicant submits that the addition of the word “strong” in the opponent’s marks gives them a “distinct appearance, sound, and conceptual meaning”. Whilst the applicant admits that there is “overlap in some areas” between the goods and services in issues (e.g., coffee and café services), the applicant denies that this overlap leads to a likelihood of confusion. The applicant therefore requests that the opposition be dismissed in full and that the contested mark be allowed to proceed to registration.
8. The opponent is represented by Withers & Rogers LLP, and the applicant is self-represented. In this case, neither party filed evidence. No hearing was requested, and only the opponent filed written submissions in lieu of a hearing. This decision is therefore taken following a careful consideration of the papers that have been filed by the parties, which will not be summarised but will be referred to as and where appropriate during this decision.
9. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK’s withdrawal from the EU.

#### **PRELIMINARY ISSUES:**

10. The applicant submits that he has “used the mark independently in commerce, and there have been no instances of customer confusion”, and that the opponent has provided no evidence of confusion on the part of the public. It should be noted, however, that the opponent is not required to provide evidence of actual

confusion between the marks,<sup>4</sup> though evidence of a lack of confusion by consumers over an extended period of time may point towards there being no likelihood of confusion.<sup>5</sup> Having said that, in this instance, I have no evidence before me that would allow me to make an accurate determination as to why there has allegedly been no confusion between the marks, and, if that is the case, whether that is because there is genuinely no likelihood of confusion or whether another factor has resulted in there being no actual confusion to date.

## **DECISION**

11. The opponent's opposition is based upon section 5(2)(b) of the Act which stipulates the following:

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

[...]

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

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

12. Section 5A of the Act stipulates 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.”

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<sup>4</sup> See paragraph 80 of *Roger Maier and Another v ASOS*, [2015] EWCA Civ 220 and *The European Limited v The Economist Newspaper Ltd* [1998] FSR 283

<sup>5</sup> Paragraphs 34 and 35 of the decision of Dr Brian Whitehead in *Azumi Limited v Nick Robinson*, Case No. O/078/22

13. The following standard summary of the principles applicable to the assessment of the likelihood of confusion was approved by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc & Anor*, [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 & Services**

- 14. The competing goods and services are as outlined in paragraph 1 and as underlined in Annexes 1 and 2 of this decision.
- 15. The opponent submits that the goods and services in issue are manifestly identical or similar. However, as discussed above, whilst the applicant admits that there is some overlap in goods and services between the parties, it fails to specifically identify which of its goods and services it concedes are similar to those of the opponent. Accordingly, given the lack of clarity in this admission, I will proceed to undertake a full assessment of the identity or similarity (or lack thereof) of the goods and services in issue in the ordinary manner.
- 16. It should be noted that section 60A of the Act provides that goods are not to be regarded as being similar to each other on the ground that they appear in the

same class under the Nice Classification<sup>6</sup>, or dissimilar on the ground that they appear in different classes under the Nice Classification.

17. In *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc.*,<sup>7</sup> the Court of Justice of the European Union (“CJEU”) stated (at paragraph 23) that, when making the comparison, “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”.
18. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case<sup>8</sup>, for assessing similarity were:
  - a. The uses of the respective goods;
  - b. The users of the respective goods;
  - c. The physical nature of the goods;
  - d. The respective trade channels through which the goods 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 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 in the same or different sectors.

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<sup>6</sup> “Nice Classification” means the system of classification under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957.

<sup>7</sup> Case C-39/97

<sup>8</sup> [1996] R.P.C. 281

19. As per the case of *Separode*,<sup>9</sup> I also bear in mind that it is permissible to group the goods together, for the purpose of comparison, where they are sufficiently comparable to be assessable in essentially the same way for the same reasons.
20. I will deal first with a comparison of the contested mark's specification and the specification for the earlier 066 mark.

**Class 30:**

Coffee; Decaffeinated coffee; Chocolate coffee; Mixtures of malt coffee with coffee; Caffeine-free coffee; Coffee extracts for use as substitutes for coffee; Coffee essences for use as substitutes for coffee; Coffee substitutes [artificial coffee or vegetable preparations for use as coffee]; Malt coffee; Flavoured coffee; Coffee bags; Mixtures of malt coffee extracts with coffee; Instant coffee; Freeze-dried coffee; Espresso; Sugar-coated coffee beans; Drip bag coffee; Substitutes (Coffee -); Coffee substitutes; Mixtures of coffee; Coffee mixtures; Chicory for use as substitutes for coffee; Cappuccino; Chicory [coffee substitute]; Coffee concentrates; Mixtures of coffee and chicory; Coffee, teas and cocoa and substitutes therefor; Mixtures of malt coffee with cocoa; Powdered coffee in drip bags; Malt coffee extracts; Mixtures of coffee and malt; Chai tea; Tea; Tea beverages with milk

21. The opponent submits that the applicant's above referenced goods are "highly similar" to the opponent's class 32 "non-alcoholic beverages", which appears in the 066 mark's specification.
22. I consider there to be an overlap in nature and method of use between the compared goods given that they are all liquids which will be drank. The purpose of these goods also overlaps, that being to quench the thirst of the consumer. On this point, I appreciate that coffee may be consumed to introduce caffeine into the user's system. However, non-alcoholic beverages covers energy drinks, which also include caffeine so there is no distinction between the purpose of the goods on this basis. The users of the goods will clearly overlap (that being members of the public). I also consider there to be an overlap in trade channels

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<sup>9</sup> BL O/399/10, Mr Geoffrey Hobbs QC, sitting as the Appointed Person

to the extent that the goods may all be sold in café/coffee shops/bars or restaurants. There will also be a degree of competition, as the consumer might choose between different categories of soft drinks. Specifically, consumers may choose to purchase a caffeinated energy drink over a cup of coffee. Noting all of the above, I consider these goods to be similar to a medium degree.

Coffee flavorings; Coffee flavourings; Coffee oils; Coffee extracts; Coffee essences; Mixtures of coffee essences and coffee extracts; Coffee essence.

23. It is noted that the opponent also submits that the applicant's above referenced goods are "highly similar" to the earlier 066 mark's class 32 "non-alcoholic beverages". However, I do not consider that to be the case. This is because I do not consider the applicant's above referenced goods to be "drinkable liquids", as has been proposed by the opponent. Without evidence being provided to the contrary, it is my understanding that all of the applicant's above referenced goods are either flavourings intended to be added to a coffee drink (i.e., the coffee flavourings) or coffee that has been processed to produce a coffee flavouring. On that basis, whilst the opponent has identified "non-alcoholic beverages" as the point of comparison, it is my view that the best comparator is "flavourings made from vegetables [other than essential oils]" in class 30 of the earlier 066 mark's specification. Taking this approach is, in my view, a reasonable one because the terms before me do not appear to be particularly complex and to simply ignore the remaining terms would be unreasonable in the circumstances.
24. Without evidence being provided to suggest otherwise, it is my understanding that all of the compared goods may come in liquid form and are flavouring ingredients used in food and beverage preparation to add or enhance flavour. I do therefore consider there to be an overlap in nature, method of use and purpose, albeit the specific flavour of the goods will differ. You would not purchase the opponent's flavouring made from vegetables in the place of the applicant's above referenced goods. Consequently, these goods are not

competitive, nor are they complementary given that they are not important to or indispensable from one another.<sup>10</sup>

25. All of these goods may be purchased from supermarkets, or even smaller farmer's markets. However, they would not be located in the same aisles or sections of those stores. Accordingly, without evidence being provided to the contrary, I do not consider there to be an overlap in trade channels between these compared goods. However, I do consider there to be an overlap in user, that being members of the general public.
26. Overall, I consider these compared goods to be similar to a medium degree.

Chocolate bark containing ground coffee beans

27. The opponent submits that the applicant's above referenced good is identical to the term "pastry and confectionary" which appears in the earlier 066 mark's specification. Without evidence being provided to the contrary, I consider this to be a broad term covering an array of sweet treats, including candies, chocolates and pastries, and I understand chocolate bark to be a type of confectionary made from pouring melted chocolate on to a baking sheet, which is then scattered with toppings (in this instance, that would be ground coffee beans). Accordingly, I do agree that the applicant's above referenced term would fall within the wider term "pastry and confectionary", and that these goods are therefore identical in line with the principle established in *Meric*.

**Class 43:**

Coffee shops; Coffee shop services; Coffee bar services; Serving food and drink in doughnut shops; Providing food and drink in doughnut shops.

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<sup>10</sup> *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06

28. I consider all of the applicant's above referenced services to be types of services relating to the provision of food and drink. In that regard, I note that the opponent's 066 mark's specification contains the terms "services for providing food and drink" and "provision of food and drink" services, and I consider these services to be identical in line with the principle established in *Meric*.

Leasing of coffee makers:

29. The opponent submits that the applicant's above referenced service is highly similar to the opponent's class 30 "coffee" goods on the basis that "Coffee is necessary for the use of coffee makers and is therefore important to their leasing". Whilst I accept that coffee is important to coffee machines/coffee makers, and whilst I would also have found coffee makers/machines to be important to the leasing of those coffee makers, I do not consider coffee to be important to or indispensable from the leasing of coffee makers.
30. In the alternative, the opponent submits that the applicant's above referenced service is similar to each of its class 43 services. However, the applicant fails to identify which of its class 43 services it considers to be the closest comparator to the applicant's above referenced service. I do not intend to, nor do I consider it reasonable for me to undertake a comparison of each of the opponent's class 43 services against the applicant's above referenced service. In the absence of clear submissions on this point, I consider a reasonable approach would be for me to identify what I consider to be the closest comparator (i.e., best case for the opponent) and to undertake a comparison on that basis. Accordingly, I consider the closest comparator to be the opponent's "services for providing food and drink"
31. Whilst these compared services overlap in purpose at a very superficial level given that they all may enable the production of coffee, their specific purpose differs, with the specific purpose of the applicant's above referenced service being to lease coffee makers/machine, and the specific purpose of the opponent's services being to provide food and drink to consumers. The compared services also differ in trade channels and method of use, with the

opponent's compared services being provided by restaurants, and the applicant's above referenced service being provided by specialised equipment suppliers. Without evidence being provided to support such a finding, I do not consider it to be common practice (as has been suggested by the opponent) for cafes and restaurants to lease out their own coffee makers/machines to commercial customers. Consequently, I do not consider these compared services to overlap in trade channels.

32. Further, whilst coffee makers/machines might be leased by undertakings providing food and drink services, I do not consider these services to be indispensable from one another. That is because they may be leased or they may be purchased. Accordingly, I do not consider these services to be complementary, nor can I see a basis for finding these services to be competitive. Without evidence being provided to suggest otherwise, I also do not consider there to be an overlap in user, as, in my view, the same entities leasing the coffee machines/makers will be providing the food and drink services, they will not also be the user of the "services for providing food and drink".
33. Noting all of the above, and in the absence of supporting evidence, I see no basis for finding the compared services to be similar. Consequently, I find these compared services to be dissimilar.
34. I will now proceed to compare the applicant's goods and services in issue with the goods and services in the opponent's 735 mark's specification.

**Class 30:**

Coffee; Decaffeinated coffee; Chocolate coffee; Mixtures of malt coffee with coffee; Caffeine-free coffee; Coffee extracts for use as substitutes for coffee; Coffee essences for use as substitutes for coffee; Coffee substitutes [artificial coffee or vegetable preparations for use as coffee]; Malt coffee; Flavoured coffee; Coffee bags; Mixtures of malt coffee extracts with coffee; Instant coffee; Freeze-dried coffee; Espresso; Sugar-coated coffee beans; Drip bag coffee; Substitutes (Coffee -); Coffee substitutes; Mixtures of coffee; Coffee mixtures; Chicory for use as substitutes for coffee;

Cappuccino; Chicory [coffee substitute]; Coffee concentrates; Mixtures of coffee and chicory; Coffee, teas and cocoa and substitutes therefor; Mixtures of malt coffee with cocoa; Powdered coffee in drip bags; Malt coffee extracts; Mixtures of coffee and malt; Chai tea; Tea; Tea beverages with milk

35. I consider all of the above terms to be types of “coffee”, “tea”, “cocoa” or “artificial coffee”. It is noted that the opponent’s 735 marks’ specification contains the terms “coffee, tea, cocoa and artificial coffee”, and I consider that all of the applicant’s above referenced terms would fall within the opponent’s aforementioned term. Accordingly, I consider all of these goods to be identical in line with the principle established in *Meric*.

Coffee flavorings; Coffee flavourings; Coffee oils; Coffee extracts; Coffee essences; Mixtures of coffee essences and coffee extracts; Coffee essence.

36. The opponent submit that all of the applicant’s above referenced terms would fall within the opponent’s wider term “coffee, tea, cocoa and artificial coffee”, and that these terms are therefore identical. For the same reasons outlined in paragraphs 23 to 26 above, I do not agree with this. However, I consider the applicant’s above referenced goods to be similar to a medium degree to the opponent’s “flavourings made from vegetables [other than essential oils]”, again, for the same reasons set out at paragraphs 23 to 26 above.

Chocolate bark containing ground coffee beans

37. For the same reasons outlined in paragraph 27 above, I consider the applicant’s above referenced good to be identical in line with the principle established in *Meric* to the opponent’s term “pastry and confectionary”, which also appears in the 735 mark’s specification.

**Class 43:**

Coffee shops; Coffee shop services; Coffee bar services; Serving food and drink in doughnut shops; Providing food and drink in doughnut shops.

38. For the same reasons outlined at paragraph 28 above, I consider the applicant's above referenced service to be identical in line with the principle established in *Meric* to the opponent's terms "services for providing food and drink" and "provision of food and drink", which also appear in the 735 mark's specification.

Leasing of coffee makers.

39. The opponent has also failed to identify what it considers to be the closest term in its 735 mark's specification to the applicant's above referenced term. In the circumstances, I consider the closest comparator to be the opponent's term "cafés". However, for the same reasons outlined in paragraphs 29 to 34, without evidence being provided to find otherwise, I find these compared services to be dissimilar.
40. As some degree of similarity between the goods and services is required for a successful claim under section 5(2)(b) of the Act, the opposition must fail in respect of those goods that I have found to be dissimilar, <sup>11</sup> namely:

**Class 43:** Leasing of coffee makers

41. However, I will proceed to consider whether there is a likelihood of confusion or association on the part of the average consumer in respect of the goods and services which I have deemed to be similar or identical, and therefore whether the opposition succeeds in respect of those goods and services under section 5(2)(b) of the Act.

**Average consumer and the purchasing act**

42. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's

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<sup>11</sup> *eSure Insurance v Direct Line Insurance* [2008] ETMR 77 CA

level of attention is likely to vary according to the category of goods and services in question (see *Lloyd Schuhfabrik Meyer*<sup>12</sup>).

43. In *Iconix Luxembourg Holdings*, 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

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<sup>12</sup> Case C-342/97

must instead rely upon the imperfect picture of the trade mark they have kept in their mind.

44. The average consumer of the goods at issue will include members of the general public. However, in relation to the services, I am of the view that the average consumer will also include business users.
45. The average cost of the goods is relatively low, and the frequency of the purchase is relatively high. When selecting the goods, I consider that the average consumer will contemplate factors such as price, taste/flavour and nutritional content. The goods at issue will typically be offered by retailers or their online equivalents. It is my view that the selection process will be primarily visual, although I do not discount an aural element.
46. When selecting the services for which I have found identity or similarity, the average consumer will take into consideration factors such as hygiene ratings, reviews from other customers and whether the services will meet their needs. When the average consumer encounters such services, this will be primarily on a visual level, such as signage on premises, websites, newspapers, advertisements, and reviews in the press, either hard copy or online. However, the possibility of aural considerations must also be recognised for various types of hospitality services, such as recommendations.
47. Accordingly, the average consumer will pay a medium degree of attention to the purchasing process of the goods and services for which I have found identity or similarity.

### **Comparison of marks**

48. The respective trade marks are shown below:

| Earlier marks                                                                                                                                                                                                                                                                                                                | Contested Mark      |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| <p>The 066 mark:</p> <p><b>STRONG ROOTS</b></p>                                                                                                                                                                                                                                                                              | <p><b>roots</b></p> |
| <p>The 735 marks:</p> <p>1 of 3:</p>  <p>2 of 3:</p>  <p>3 of 3:</p>  |                     |

49. The opponent submits that the marks in issue are “highly similar”. Specifically, the opponent submits that the “ROOTS” element of the earlier mark is the distinctive element, and the word “STRONG” “would be seen by a material proportion of average consumer as a laudatory term extolling the benefits of the goods and services.” Consequently, the opponent submits that the marks in issue are visually, aurally, and conceptually similar to a high degree.

50. As discussed above, the applicant denies that the marks in issue are similar. Specifically, the applicant submits that the marks in issue are distinct in “appearance, sound, and conceptual meaning.”

### **Overall Impression:**

51. The contested mark is a word mark containing solely the word “roots”. There are no other elements which contribute to the mark, so the overall impression rests in the word itself.
52. The 066 mark is also a word mark containing the words “STRONG ROOTS”. There are no other elements which contribute to the mark, so the overall impression also rests in the words themselves. Whilst I appreciate that the beginning of marks tend to have more visual and aural impact,<sup>13</sup> I do not consider that to be the case in this instance. This is because I consider that these words hang together, and I agree with the opponent that the word “strong” will be perceived as a laudatory term alluding to the subsequent word “ROOTS”. Consequently, I consider that the words “STRONG ROOTS” play an equally dominant role in the overall impression of the mark.
53. The 735 marks are all figurative marks. All of the figurative marks contain the words “STRONG ROOTS” in a standard, upper case, white or black type face. In each of the figurative marks the words are positioned inside a circular device, and the word “strong” is stacked immediately above the word “roots”. Between the words is a line that runs the entire width of the surrounding circular device. Behind the words in each of the figurative devices is, what appears to me to be, a shovel device, and the blade of the shovel slightly overlaps the circular device surrounding the other elements of the figurative marks.
54. Each of the figurative marks are presented in different colours. All elements of the first figurative mark are either presented or outlined (in the case of the shovel and circular devices) in white and positioned in front of a black circular background. By contrast, all elements of the second figurative device are

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<sup>13</sup> *El Corte Inglés, SA v OHIM* Cases T-183/02 and T-184/02

presented or outlined (again, in the case of the shovel and circular devices) in black against a white background. In the third figurative mark, all elements of the mark are also either presented or outlined in white, but they are positioned in front of a purple square background. I consider that the colouring of the figurative marks plays a limited role in their overall impression.

55. In addition, I am of the view that the circular device and the line running through the width of the circular device will be perceived by the average consumer as simple geometric shapes. I also consider the shovel device to be allusive of the word “roots” given that a shovel is a tool commonly used to dig around or expose roots for transplanting or for their removal. Noting all of the above and given that consumers’ attention is usually drawn to the elements of marks that they are able to read, I find all of the stylisation elements (namely the colouring and device elements) of the figurative marks to play a lesser role in their overall impression to the words themselves.
56. Having said that, for the same reasons identified in paragraph 52, I consider the words “STRONG ROOTS” to play an equally dominant role in the figurative marks’ overall impression.

### **Comparison with the contested mark:**

THE 066 MARK:

57. Visually, the marks overlap in their second word “ROOTS”. However, the 066 mark also contains the word “STRONG” at the beginning, which is not present in the contested mark. Both of the compared marks are word marks, and whilst they appear on the register in differing case, marks registered as word marks protect their use in any normal font, including upper and lower-case letters, or any customary combination of those characters.<sup>14</sup> Weighing up all of the above, I find the compared marks to be visually similar to a medium degree.
58. Aurally, as discussed above, the marks overlap in their second word, but the 066 mark also contains the word “STRONG” as its first word, which is not present in

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<sup>14</sup> *LA Superquímica v European Union Intellectual Property Office (EUIPO)*, Case T-24/17 – paragraph 39

the contested mark. The words “STRONG” and “ROOTS” are dictionary words, and I consider that these words would both be pronounced in the ordinary way. Accordingly, I consider that the word “roots” will be pronounced identically in both marks. Noting the above, I consider the marks to be aurally similar to a medium degree.

59. I now turn to a conceptual comparison of these marks. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer. This is highlighted in numerous judgments of the GC and the CJEU, including *Ruiz Picasso v OHIM*.<sup>15</sup> The assessment must, therefore, be made from the point of view of the average consumer.
60. As discussed above, the marks overlap in their use of the word “ROOTS”. The word ‘ROOTS’ is plural of the word ‘root’, which has multiple meanings. It is, therefore, necessary to consider the meaning of the word in relation to the goods and services in issue.<sup>16</sup> In respect of the contested mark, all of the goods in issue include plant-based goods, or services relating to the serving or provision of plant-based goods. I therefore consider that a significant proportion of average consumers would link the word ‘ROOTS’ to the root of the plant from which these goods are sourced.
61. The 066 mark also contains the words “STRONG ROOTS” which are a combination of two dictionary words. ROOTS will be afforded the same meaning discussed above. As for the addition of ‘STRONG’, this will be viewed as qualifying the word ‘ROOTS’ in that the roots discussed are strong, i.e. they run deep in the ground.
62. In comparing the marks at issue, I find that the shared concept of the word “ROOTS” will be considerable. However, the addition of the word “STRONG” is a point of conceptual difference, as it has no counterpart in the contested mark. Overall, I consider these marks to be conceptually similar to a medium degree.

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<sup>15</sup> [2006] ECR I-643; [2006] E.T.M.R

<sup>16</sup> Please see decision of Mr Thomas Mitcheson KC in O/1174/25

## THE 735 MARKS:

63. Visually, the marks overlap in their use of the word “ROOTS”. However, the 735 marks also contain the word “STRONG” as their first word, which is not present in the contested mark. The 735 marks also have a number of presentational differences to the contested mark (i.e., the circular device, the shovel device, the line spanning the width of the circular device and their respective colouring). Noting the above, I find the marks to be visually similar to between a low and medium degree.
64. Aurally, I consider that the only elements of the compared marks that will be pronounced are the words. As such, the same finding reached at paragraph 58 above applies here, namely that the marks are aurally similar to a medium degree.
65. I consider that the conceptual meaning of the contested mark will be as outlined in paragraph 60 above.
66. In respect of all of the earlier figurative marks, I consider that the words “STRONG ROOTS” will be given the conceptual meaning referenced in paragraphs 60 to 61 above. This is on the basis that the only additional point that carries a concept is the shovel device which simply reinforces the meaning of the marks as shovels are simply tools used to gain access to or dig up a root.
67. I do not consider that the other elements of the figurative devices alter the conceptual meaning identified above. Accordingly, I, once again, find that the shared concept of the word “ROOTS” will be considerable. However, the addition of the word “STRONG” is a point of conceptual difference, as it has no counterpart in the earlier mark. Overall, I consider that the marks are conceptually similar to a medium degree.

## **Distinctive character of the earlier trade mark**

68. In *Lloyd Schuhfabrik Meyer* 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 C108/97 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).”

69. Whilst the distinctiveness of a mark may be enhanced as a result of it having been used in the market, in this instance the opponent has filed no evidence of use. Consequently, I have only the inherent position to consider.
70. Distinctiveness is a scale along which marks of various types sit. A mark which is allusive of the goods/services will have less distinctive character than one that is not; dictionary words will also be less distinctive than words which are entirely fanciful. However, all will turn on the particular facts. For example, there are “invented” words which are really just composites of two allusive words and only distinctive as a result, and dictionary words which are more or less common than others.
71. The earlier marks include the words ‘STRONG ROOTS’. As the sole or dominant element of them all, I find that the distinctiveness of the marks lies in these words.

'ROOTS' will allude to the goods and services at issue on the basis that they will be viewed as a reference to the source of the plant-based goods sold or served by the opponent. As for the addition of 'STRONG', this will simply reinforce this meaning in that the 'ROOTS' referred to are 'STRONG', i.e. that they run deep into the ground. I consider that "STRONG ROOTS" is allusive of all of the goods and services in the opponent's specification that I have found to be identical or similar. I therefore consider that "STRONG ROOTS" has between a low and medium degree of inherent distinctive character for those goods and services.

72. I appreciate that the earlier 735 marks also contain figurative devices such as a shovel device and simple geometric shapes. They are also presented in different colours. However, shovels are tools used to dig up or expose roots and, as such, I do not consider that this device contributes to the distinctive character of the earlier 735 marks to any material degree to warrant a finding that it increases the distinctiveness of the words. Further, the additional device elements will be perceived as banal geometric shapes and therefore do not contribute to the distinctive character of the earlier 735 marks. Lastly, as for the use of colour across these marks, I also consider that this is not particularly remarkable and does not impact on the distinctiveness of the marks to any material degree.
73. Noting all of the above, I consider all of the earlier marks to have between a low and medium degree of inherent distinctive character.

### **Likelihood Of Confusion**

74. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, whilst indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods/services down to the responsible undertakings being the same or related.
75. 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 (see *Sabel*<sup>17</sup>). The first is the interdependency principle i.e., a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa (see *Canon*<sup>18</sup>). It is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the goods, and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

76. Save for the service referenced in paragraph 40 of this decision, I have found the applicant's goods and services to be identical or similar to a medium degree to the opponent's goods and services. I have also found the 066 mark and the contested mark to be visually, aurally and conceptually similar to a medium degree, and the 735 mark and the contested mark to be aurally and conceptually similar to a medium degree, and visually similar to between a low and medium degree.
77. I have found the earlier marks to have between a low to medium level of distinctive character. I have also identified that the average consumer of the goods and services in issue would be members of the general public or business users who will pay a medium level of attention during the purchasing process. I have also determined that the purchasing process for all of the goods in issue would be primarily visual in nature, although I do not discount aural considerations.
78. Weighing up all of the above, noting the principle of imperfect recollection and that consumers rarely have the opportunity to compare marks side by side, I consider there to be sufficient similarities between the marks in issue that the average consumer is likely to mistake the parties' marks for one another. Consequently, I find that there is a likelihood of direct confusion between the marks in issue.

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<sup>17</sup> C-251/95, para 22

<sup>18</sup> C-39/97, para 17

79. Further, whilst I note my finding that the earlier mark only has between a low and medium degree of distinctive character, I note that this does not preclude a finding of a likelihood of confusion between the marks.<sup>19</sup>
80. For completeness, I will go on now to consider whether the average consumer, having recognised that the marks are different, considers the common element of all of the marks (the word “ROOTS”) and determines, through a mental process, that the marks are related and originate from the same, or an economically linked undertaking.
81. Indirect confusion was described in the following terms by Iain Purvis KC, sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*:<sup>20</sup>

“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 recognised 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

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<sup>19</sup> *L’Oréal SA v OHIM*, Case C-235/05 P

<sup>20</sup> BL O/375/10

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).”

82. 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.<sup>21</sup> 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.<sup>22</sup> The Court of Appeal has also emphasised that, where there is no direct confusion, there must be a “proper basis” for finding indirect confusion.<sup>23</sup>

83. Overall, it is my view that the average consumer would perceive the word “ROOTS” as being an indicator of origin of the goods and services in issue, and the addition of the word “STRONG”, whilst before the common element, is still indicative of a brand extension as it will be seen as both a play on the conceptual meaning outlined above, and alluding to the fact that “ROOTS” has created a sub-brand of goods such as coffee and tea of higher strength. Whilst this connection is not so direct, I consider it to be a double entendre that consumers would pick up when confronted with both parties’ marks. Further, where the

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<sup>21</sup> Liverpool Gin Distillery and others v Sazerac Brands, LLC and others [2021] EWCA Civ 1207

<sup>22</sup> Duebros Limited v Heirler Cenovis GmbH, BL O/547/17

<sup>23</sup> Liverpool Gin Distillery and others v Sazerac Brands, LLC and others [2021] EWCA Civ 1207

earlier marks are figurative, the stylistic differences will just be seen as alternative marks used by the same or economically linked undertaking and do not detract from my findings above regarding the addition of the word “STRONG”.<sup>24</sup> Noting all of the above, I do consider there to be a risk of indirect confusion between all of the marks in issue in this instance.

## **CONCLUSION**

84. For the reasons outlined above, the opposition succeeds under section 5(2)(b) in respect of all of the goods and services that I have found to be similar. Therefore, the contested mark is hereby, subject to any successful appeal of my decision, refused registration for the following:

**Class 30:** Coffee; Decaffeinated coffee; Chocolate coffee; Mixtures of malt coffee with coffee; Caffeine-free coffee; Coffee extracts for use as substitutes for coffee; Coffee essences for use as substitutes for coffee; Coffee substitutes [artificial coffee or vegetable preparations for use as coffee]; Malt coffee; Flavoured coffee; Coffee bags; Coffee flavorings; Mixtures of malt coffee extracts with coffee; Instant coffee; Freeze-dried coffee; Coffee flavourings; Coffee oils; Espresso; Sugar-coated coffee beans; Coffee extracts; Drip bag coffee; Substitutes (Coffee -); Coffee substitutes; Coffee essences; Mixtures of coffee; Coffee mixtures; Chicory for use as substitutes for coffee; Cappuccino; Chicory [coffee substitute]; Coffee concentrates; Mixtures of coffee and chicory; Coffee, teas and cocoa and substitutes therefor; Mixtures of malt coffee with cocoa; Mixtures of coffee essences and coffee extracts; Powdered coffee in drip bags; Coffee essence; Malt coffee extracts; Mixtures of coffee and malt; Chai tea; Tea; Tea beverages with milk; Chocolate bark containing ground coffee beans.

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<sup>24</sup> I appreciate this example is where “STRONG ROOTS”, being the earlier mark, is perceived as a sub brand. In making this finding I remind myself of paragraphs 75 to 84 of *Comic Enterprises Ltd v Twentieth Century Fox Film Corporation* [2016] EWCA Civ 41, wherein Kitchen LJ explained that “right way round” or “wrong way round” confusion may be a consequence of nothing more meaningful than the order in which the consumer happened to come across the mark and the sign. He explained further that in both instances the consumer thinks that the goods or services in issue come from the same undertaking or economically linked undertakings, and they may be equally damaging to the distinctiveness and functions of the mark.

**Class 43:** Coffee shops; Coffee shop services; Coffee bar services; Serving food and drink in doughnut shops; Providing food and drink in doughnut shops.

85. However, the contested mark may proceed to registration (again, subject to any successful appeal of my decision) for the following services, which I have found to be dissimilar:

**Class 43:** Leasing of coffee makers.

### **COSTS**

86. As the opposition has succeeded partially, the opponent is entitled to a contribution towards their costs, based upon the scale published in Tribunal Practice Note 1/2023. It is noted that the applicant did achieve some measure of success, but this only related to one term and, as such, I do not consider that it warrants a reduction in the costs to be awarded to the opponent. Therefore, in the circumstances, I award the applicant the sum of £700 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

|                                               |                    |
|-----------------------------------------------|--------------------|
| Official Fee for Filing Notice of Opposition: | £100               |
| Preparing a Notice of Opposition:             | £250               |
| Preparing Submissions:                        | £350               |
| <b><u>Total:</u></b>                          | <b><u>£700</u></b> |

87. I therefore order Ahmad Salah to pay Cross Spade Limited the sum of **£700**. This sum should 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 30<sup>th</sup> day of June 2026**

**B Hartland**

**For the Registrar**

## **Annex 1**

### **Class 29:**

Meat, fish, poultry and game; meat extracts; preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs; milk and milk products; edible oils and fats; Vegetables (Prepared -); Mixed vegetables; Vegetables, dried; Vegetables, cooked; Vegetables, preserved; Bottled vegetables; Cut vegetables; Grilled vegetables; Peeled vegetables; Processed vegetables; Frozen vegetables; Dried vegetables; Canned vegetables; Cooked vegetables; Tinned vegetables; Pickled vegetables; Preserved vegetables; Canned sliced vegetables; Fermented vegetables (kimchi); Vegetables in vinegar; Preserves made from vegetables; Vegetables, tinned [canned (Am)]; Preserved vegetables (in oil); Snack foods based on vegetables; Pre-cut vegetables for salads; Extracts of vegetables [juices] for cooking; Frozen prepared meals consisting principally of vegetables; Processed fruits, fungi and vegetables (including nuts and pulses); Kimchi jjigae [Korean dish consisting primarily of fermented vegetables, pork and tofu]; Burgers; Vegetable burgers; Veggie burger patties; Processed sweet potatoes; Processed avocados.

### **Class 30:**

Coffee, tea, cocoa and artificial coffee; rice; tapioca and sago; flour and preparations made from cereals; bread, pastry and confectionery; ices; sugar, honey, treacle; yeast, baking-powder; salt; mustard; vinegar, sauces (condiments); spices; ice; Pies containing vegetables; Crackers flavoured with vegetables; Frozen pastry stuffed with vegetables; Pastries consisting of vegetables and poultry; Pastries consisting of vegetables and fish; Pastries consisting of vegetables and meat; Stir-fried noodles with vegetables (Japchae); Frozen prepared rice with seasonings and vegetables; Frozen pastry stuffed with meat and vegetables; Rice mixed with vegetables and beef [bibimbap]; Filled yeast dough with fillings consisting of vegetables; Flavourings made from vegetables [other than essential oils]; Cooked rice mixed with vegetables and beef (bibimbap); Boxed lunches consisting of rice, with added meat, fish or vegetables; Pre-packaged lunches consisting primarily of rice, and also including meat, fish or vegetables; Processed quinoa.

**Class 31:**

Grains and agricultural, horticultural and forestry products not included in other classes; live animals; fresh fruits and vegetables; seeds; natural plants and flowers; foodstuffs for animals; malt; Vegetables, fresh; Fresh vegetables; Raw vegetables; Unprocessed vegetables; Root vegetables [fresh]; Onions, fresh vegetables; Salad vegetables [fresh]; Seeds for vegetables; Organic fresh vegetables; Fresh leafy Asian vegetables; Fresh fruits, nuts, vegetables and herbs; Unprocessed quinoa; Fresh kale; Fresh sweet potatoes; Unprocessed avocados; Raw avocados; Fresh avocados.

**Class 32:**

Beers; mineral and aerated waters and other non-alcoholic beverages; fruit beverages and fruit juices; syrups and other preparations for making beverages; Green vegetable juice beverages; Non-alcoholic beverages containing vegetable juices; Vegetable juice; Vegetable drinks; Vegetable smoothies; Vegetable-based beverages; Beverages consisting of a blend of fruit and vegetable juices; Juices; Non-alcoholic beverages.

**Class 35:**

Advertising; business management; business administration; office functions; Retail services relating to food; Mail order retail services related to foodstuffs.

**Class 40**

Food preservation; Food and beverage treatment; Food preservation services; Foods (Freezing of -); Food and drink preservation; Food processing; Preservation of food; Processing of foodstuffs for use in manufacture; Freezing services for others; Freezing of foods; Preservation of drink.

**Class 43:**

Services for providing food and drink; temporary accommodation; Food and drink catering; Food preparation; Restaurants; Cafés; Carry-out restaurants; Provision of food and drink; Advice concerning cooking recipes; Providing of food and drink via a mobile truck; Mobile restaurant services; Mobile catering services.

## **Annex 2:**

### **Class 29:**

Meat, fish, poultry and game; meat extracts; preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs; milk and milk products; edible oils and fats; Vegetables (Prepared -); Mixed vegetables; Vegetables, dried; Vegetables, cooked; Vegetables, preserved; Bottled vegetables; Cut vegetables; Grilled vegetables; Peeled vegetables; Processed vegetables; Frozen vegetables; Dried vegetables; Canned vegetables; Cooked vegetables; Tinned vegetables; Pickled vegetables; Preserved vegetables; Canned sliced vegetables; Fermented vegetables (kimchi); Vegetables in vinegar; Preserves made from vegetables; Vegetables, tinned [canned (Am)]; Preserved vegetables (in oil); Snack foods based on vegetables; Pre-cut vegetables for salads; Extracts of vegetables [juices] for cooking; Frozen prepared meals consisting principally of vegetables; Processed fruits, fungi and vegetables (including nuts and pulses); Kimchi jjigae [Korean dish consisting primarily of fermented vegetables, pork and tofu]; Burgers; Vegetable burgers; Veggie burger patties; Processed sweet potatoes; Processed avocados.

### **Class 30:**

Coffee, tea, cocoa and artificial coffee; rice; tapioca and sago; flour and preparations made from cereals; bread, pastry and confectionery; ices; sugar, honey, treacle; yeast, baking-powder; salt; mustard; vinegar, sauces (condiments); spices; ice; Pies containing vegetables; Crackers flavoured with vegetables; Frozen pastry stuffed with vegetables; Pastries consisting of vegetables and poultry; Pastries consisting of vegetables and fish; Pastries consisting of vegetables and meat; Stir-fried noodles with vegetables (Japchae); Frozen prepared rice with seasonings and vegetables; Frozen pastry stuffed with meat and vegetables; Rice mixed with vegetables and beef [bibimbap]; Filled yeast dough with fillings consisting of vegetables; Flavourings made from vegetables [other than essential oils]; Cooked rice mixed with vegetables and beef (bibimbap); Boxed lunches consisting of rice, with added meat, fish or vegetables; Pre-packaged lunches consisting primarily of rice, and also including meat, fish or vegetables; Processed quinoa.

**Class 31:**

Grains and agricultural, horticultural and forestry products not included in other classes; live animals; fresh fruits and vegetables; seeds; natural plants and flowers; foodstuffs for animals; malt; Vegetables, fresh; Fresh vegetables; Raw vegetables; Unprocessed vegetables; Root vegetables [fresh]; Onions, fresh vegetables; Salad vegetables [fresh]; Seeds for vegetables; Organic fresh vegetables; Fresh leafy Asian vegetables; Fresh fruits, nuts, vegetables and herbs; Unprocessed quinoa; Fresh kale; Fresh sweet potatoes; Unprocessed avocados; Raw avocados; Fresh avocados.

**Class 32:**

Beers; mineral and aerated waters and other non-alcoholic beverages; fruit beverages and fruit juices; syrups and other preparations for making beverages; Green vegetable juice beverages; Non-alcoholic beverages containing vegetable juices; Vegetable juice; Vegetable drinks; Vegetable smoothies; Vegetable-based beverages; Beverages consisting of a blend of fruit and vegetable juices; Juices; Non-alcoholic beverages.

**Class 35:**

Advertising; business management; business administration; office functions; Retail services relating to food; Mail order retail services related to foodstuffs.

**Class 40:**

Food preservation; Food and beverage treatment; Food preservation services; Foods (Freezing of -); Food and drink preservation; Food processing; Preservation of food; Processing of foodstuffs for use in manufacture; Freezing services for others; Freezing of foods; Preservation of drink.

**Class 43:**

Services for providing food and drink; temporary accommodation; Food and drink catering; Food preparation; Restaurants; Cafés; Carry-out restaurants; Provision of food and drink; Advice concerning cooking recipes; Providing of food and drink via a mobile truck; Mobile restaurant services; Mobile catering services.