

O/0565/26

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 4106300
IN THE NAME OF MASONS OF YORKSHIRE LTD
TO REGISTER THE FOLLOWING TRADE MARK:**

Green Vodka

IN CLASSES 21, 32, 33, AND 43

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 451430
BY VLAKTOR TRADING LIMITED**

Background and pleadings

1. Masons of Yorkshire LTD (“the applicant”) applied to register the trade mark “Green Vodka” in the UK on 30 September 2024, under number 4106300. It was accepted and published in the Trade Marks Journal on 18 October 2024 in respect of the following goods and services:

Class 21: *Liqueur cups; Liqueur flasks; Drinking bottles; Cocktail glasses.*

Class 32: *Cocktails, non-alcoholic; Non-alcoholic cocktails; Kvass [non-alcoholic beverages]; Non-alcoholic fruit cocktails; Non-alcoholic sparkling fruit juice drinks; Non-alcoholic grape juice beverages; Non-alcoholic cocktail mixes; Cordials [non-alcoholic]; Non-alcoholic cordials; Non-alcoholic fruit vinegar beverages; Non-alcoholic drinks; Juice drinks; Non-alcoholic fruit drinks; Fruit juice beverages (Non-alcoholic -); Non-alcoholic fruit juice beverages; Cordials (non-alcoholic beverages); Non-alcoholic beverages flavoured with tea; Non-alcoholic beverages flavored with tea; Non-alcoholic beverages flavoured with coffee; Apple juice drinks; Non-alcoholic cocktail bases; Non-alcoholic beverages flavored with coffee; Carbonated non-alcoholic drinks; Non-alcoholic beverages with tea flavor; Non-alcoholic flavored carbonated beverages; Fruit flavored drinks; Fruit flavoured drinks; Aperitifs, non-alcoholic; Fruit juice drinks; Fruit flavoured carbonated drinks.*

Class 33: *Vodka; Flavored tonic liquors; Alcoholic seltzers; Alcoholic fruit cocktail drinks; Alcoholic cocktails; Aperitifs with a distilled alcoholic liquor base; Pre-mixed alcoholic beverages, other than beer-based; Alcoholic cocktails containing milk; Alcoholic cocktail mixes; Alcoholic bitters; Alcoholic cocktails in the form of chilled gelatins; Alcoholic aperitif bitters; Grain-based distilled alcoholic beverages; Flavoured brewed alcoholic malt beverages, except beers; Flavored brewed alcoholic malt beverages, except beers; Cream liqueurs; Pre-mixed alcoholic beverages; Alcoholic cordials; Liqueurs; Cordials [alcoholic beverages]; Alcoholic tea-based beverage; Tonic liquor flavored with pine needle extracts (matsuba-zake); Alcoholic carbonated beverages, except beer; Cocktails; Alcoholic beverages, except beer; Alcoholic beverages (except beer); Beverages (Alcoholic -), except beer; Digestifs [liqueurs and spirits]; Coffee-based liqueurs; Distilled beverages; Beverages (Distilled -).*

Class 43: Food and drink catering; Catering of food and drink; Catering (Food and drink -); Preparation of food and drink; Providing food and drink; Providing of food and drink; Provision of food and drink; Provision of food and drink in restaurants; Take-away food and drink services; Takeaway food and drink services; Providing food and drink in bistros; Catering of food and drinks; Serving food and drinks; Serving food and drink for guests; Hospitality services [food and drink]; Food and drink catering for banquets; Catering for the provision of food and drink; Serving food and drink for guests in restaurants; Providing food and drink for guests; Services for the preparation of food and drink; Food and drink preparation services; Food and drink catering for institutions; Food and drink catering for cocktail parties; Providing food and drink for guests in restaurants; Serving food and drink in restaurants and bars; Providing food and drink in restaurants and bars; Serving food and drink in Internet cafes; Preparation of food and beverages; Corporate hospitality (provision of food and drink); Services for providing food and drink; Provision of food and beverages; Services for the provision of food and drink; Providing food and drink in Internet cafes; Providing food and beverages; Take away food and drink services; Club services for the provision of food and drink; Preparation and provision of food and drink for immediate consumption; Catering services for the provision of food and drink; Catering for the provision of food and beverages; Arranging of wedding receptions [food and drink]; Providing of food and drink via a mobile truck.

2. Vlaktor Trading Limited ("the opponent") opposes the trade mark on the basis of section 5(2)(b) of the Trade Marks Act 1994 ("the Act"). The opposition is directed at all the goods and services. The opponent relies upon the international registration designating the UK, no 1323845 ("the opponent's IR"):



3. The opponent's IR's registration date was 9 August 2016, and the date of protection in the UK was 23 May 2024. It stands registered for the following goods:

Class 33: vodka.

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

5. In its statement of grounds, the opponent argues that the competing marks are highly similar, and that the parties' goods are identical or similar. On this basis, the opponent submits that there is a likelihood of confusion.

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

7. The opponent is professionally represented by Stevens, Hewlett & Perkins, whereas the applicant is not professionally represented. Both parties filed evidence. No hearing was requested, and neither party filed submissions in lieu. This decision is taken following careful consideration of all the papers before me.

Preliminary issue: evidence

8. The applicant's evidence consists of a witness statement provided by Karl Mason (dated 23 July 2025). Mr Mason states that he is authorised to speak on behalf of his company in these proceedings. He did not file any exhibits to accompany his witness statement. The witness statement contained a series of submissions, rather than evidence.

9. The opponent filed evidence in response. This consisted of a witness statement provided by Emma Kirkpatrick (dated 23 September 2025). Mrs Kirkpatrick is a Chartered Trade Mark Attorney. Mrs Kirkpatrick's witness statement cites Tribunal Practice Notice (1/2015) which states "it is not appropriate to file submissions in the form of evidence". She files Exhibit EK1 which contains the relevant section of Tribunal Practice Notice (1/2015).

10. Whilst the applicant's witness statement was admitted into the proceedings, it is my view that it does not constitute evidence on the basis that it contains only submissions. On this basis, I will treat it as submissions rather than as evidence for the purposes of this decision.

11. I have taken everything submitted into account in reaching my decision and will refer to it below where necessary.

Relevance of EU law

12. 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 2018¹ requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

Section 5(2)(b)

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

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

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

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

¹ As amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023

15. The following standard summary of the principles applicable to the assessment of the likelihood of confusion was approved by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc & Anor*:²

- (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;

² [2025] UKSC 25

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

Comparison of goods and services

16. In *Canon*,³ the Court of Justice of the European Union (“CJEU”) stated, at paragraph 23 of its judgment, that when considering whether goods and services are similar, all the relevant factors relating to the goods and services should be taken into account. The CJEU stated that those factors include their nature, intended purpose, method of use and whether they are in competition with each other or are complementary.

17. The relevant factors identified by Jacob J. (as he then was) in *Treat*⁴ for assessing similarity were:

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;

³ Case C-39/97

⁴ [1996] R.P.C. 281

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

18. In *Kurt Hesse v OHIM*,⁵ the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods and services. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*,⁶ the General Court (“GC”) stated that “complementary” means:

“...there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking.”

19. In *Gérard Meric v OHIM*,⁷ the GC confirmed that even if goods and services are not worded identically, they can still be considered identical if one term falls within the scope of another (or vice versa):

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

⁵ Case C-50/15 P

⁶ Case T-325/06

⁷ Case T- 133/05

20. The goods and services to be compared are as follows:

The opponent's goods	The applicant's goods and services
<u>Class 33:</u> vodka.	<u>Class 21:</u> Liqueur cups; Liqueur flasks; Drinking bottles; Cocktail glasses. <u>Class 32:</u> Cocktails, non-alcoholic; Non-alcoholic cocktails; Kvass [non-alcoholic beverages]; Non-alcoholic fruit cocktails; Non-alcoholic sparkling fruit juice drinks; Non-alcoholic grape juice beverages; Non-alcoholic cocktail mixes; Cordials [non-alcoholic]; Non-alcoholic cordials; Non-alcoholic fruit vinegar beverages; Non-alcoholic drinks; Juice drinks; Non-alcoholic fruit drinks; Fruit juice beverages (Non-alcoholic -); Non-alcoholic fruit juice beverages; Cordials (non-alcoholic beverages); Non-alcoholic beverages flavoured with tea; Non-alcoholic beverages flavored with tea; Non-alcoholic beverages flavoured with coffee; Apple juice drinks; Non-alcoholic cocktail bases; Non-alcoholic beverages flavored with coffee; Carbonated non-alcoholic drinks; Non-alcoholic beverages with tea flavor; Non-alcoholic flavored carbonated beverages; Fruit flavored drinks; Fruit flavoured drinks; Aperitifs, non-alcoholic; Fruit juice drinks; Fruit flavoured carbonated drinks. <u>Class 33:</u> Vodka; Flavored tonic liquors; Alcoholic seltzers; Alcoholic fruit cocktail drinks; Alcoholic cocktails; Aperitifs with a distilled alcoholic liquor base; Pre-mixed alcoholic beverages, other than beer-based; Alcoholic cocktails containing milk; Alcoholic cocktail mixes; Alcoholic bitters; Alcoholic cocktails in the form of chilled gelatins; Alcoholic aperitif bitters; Grain-based distilled alcoholic beverages; Flavoured brewed alcoholic malt beverages, except beers; Flavored brewed alcoholic malt beverages, except beers; Cream liqueurs; Pre-mixed alcoholic beverages; Alcoholic cordials; Liqueurs; Cordials [alcoholic beverages]; Alcoholic tea-based beverage; Tonic liquor

	<i>flavored with pine needle extracts (matsuba-zake); Alcoholic carbonated beverages, except beer; Cocktails; Alcoholic beverages, except beer; Alcoholic beverages (except beer); Beverages (Alcoholic -), except beer; Digestifs [liqueurs and spirits]; Coffee-based liqueurs; Distilled beverages; Beverages (Distilled -).</i> <u><i>Class 43: Food and drink catering; Catering of food and drink; Catering (Food and drink -); Preparation of food and drink; Providing food and drink; Providing of food and drink; Provision of food and drink; Provision of food and drink in restaurants; Take-away food and drink services; Takeaway food and drink services; Providing food and drink in bistros; Catering of food and drinks; Serving food and drinks; Serving food and drink for guests; Hospitality services [food and drink]; Food and drink catering for banquets; Catering for the provision of food and drink; Serving food and drink for guests in restaurants; Providing food and drink for guests; Services for the preparation of food and drink; Food and drink preparation services; Food and drink catering for institutions; Food and drink catering for cocktail parties; Providing food and drink for guests in restaurants; Serving food and drink in restaurants and bars; Providing food and drink in restaurants and bars; Serving food and drink in Internet cafes; Preparation of food and beverages; Corporate hospitality (provision of food and drink); Services for providing food and drink; Provision of food and beverages; Services for the provision of food and drink; Providing food and drink in Internet cafes; Providing food and beverages; Take away food and drink services; Club services for the provision of food and drink; Preparation and provision of food and drink for immediate consumption; Catering services for the provision of food and drink; Catering for the provision of food and beverages; Arranging of wedding receptions [food and drink]; Providing of food and drink via a mobile truck.</i></u>
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21. In its statement of grounds, the opponent submits that vodka in both specifications is identical. It also specifies that *Alcoholic seltzers, Alcoholic fruit cocktail drinks,*

Alcoholic cocktails, Aperitifs with a distilled alcoholic liquor base, Pre-mixed alcoholic beverages, other than beer-based, Alcoholic cocktails containing milk, Alcoholic cocktail mixes, Alcoholic cocktails in the form of chilled gelatins, Cream liqueurs, Pre-mixed alcoholic beverages, Alcoholic cordials, Liqueurs, Cordials [alcoholic beverages], Alcoholic tea-based beverage, Alcoholic carbonated beverages, except beer, Cocktails, Alcoholic beverages, except beer, Alcoholic beverages (except beer), Beverages (Alcoholic -), except beer, Digestifs [liqueurs and spirits], Coffee-based liqueurs, Distilled beverages, and Beverages (Distilled -) in class 33 are highly similar. It argues that the applicant's remaining goods and services are similar on the basis that they are complementary to the opponent's goods.

22. In its counterstatement, the applicant states that "I would deny the actual goods or services are identical or similar to those covered by the previous mark". In his witness statement, the applicant also later acknowledges that "the goods may be similar or identical (i.e., vodka/alcoholic beverages)". I have therefore interpreted the applicant's comments as an admission that any goods which are related to vodka or alcoholic beverages are either similar or identical to the opponent's goods, but that it still denies that any goods which are not related to vodka or alcoholic beverages, as well as the services, are similar to the opponent's goods.

23. For the purposes of comparing goods and services, it is permissible to consider groups of terms collectively where they are sufficiently comparable to be assessed in essentially the same way and for the same reasons.⁸ I have therefore assessed the applicant's goods and services by dividing the terms into groups as per below.

Class 21:

Liqueur cups; Liqueur flasks; Drinking bottles; Cocktail glasses.

The goods' nature and purpose will differ as the applicant's goods are physical receptacles designed either to be used when consuming beverages (in the case of *liqueur cups* and *cocktail glasses*) or to carry beverages (in the case of *drinking bottles* and *liqueur flasks*), whereas the opponent's *vodka* is an alcoholic liquid drunk for pleasure. The users will overlap as both are likely to be adults. Their trade channels

⁸ *Separode Trade Mark* (BL O/399/10) and *BVBA Management, Training en Consultancy v. Benelux-Merkenbureau* [2007] ETMR 35 at paragraphs 30 to 38

will differ as the applicant's goods will be sold through homeware stores and the opponent's goods will be sold through shops such as newsagents. Even where they are sold through the same trade channels such as department stores or large supermarkets which stock both types of goods, they will appear in different areas within those retail environments. I do not find that they are complementary. Mr Daniel Alexander Q.C. (sitting as the Appointed Person) stated the following in *Sandra Amelia Mary Elliot v LRC Holdings Limited*:⁹

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

24. Whilst the applicant's goods are essential for the use of the opponent's goods, it is my view that consumers would not believe that the responsibility for producing both lies with the same undertaking. I find that they are therefore not complementary. I also find that they are not in competition with each other, as consumers will not typically choose between one in place of the other. Taking all these factors into account, I find that the parties' goods are dissimilar.

Class 32:

Cocktails, non-alcoholic; Non-alcoholic cocktails; Kvass [non-alcoholic beverages]; Non-alcoholic fruit cocktails; Non-alcoholic sparkling fruit juice drinks; Non-alcoholic grape juice beverages; Non-alcoholic cocktail mixes; Cordials [non-alcoholic]; Non-alcoholic cordials; Non-alcoholic fruit vinegar beverages; Non-alcoholic drinks; Juice drinks; Non-alcoholic fruit drinks; Fruit juice beverages (Non-alcoholic -); Non-alcoholic fruit juice beverages; Cordials (non-alcoholic beverages); Non-alcoholic beverages flavoured with tea; Non-alcoholic beverages flavored with tea; Non-alcoholic beverages flavoured with coffee; Apple juice drinks; Non-alcoholic cocktail bases; Non-alcoholic beverages flavored with coffee; Carbonated non-alcoholic drinks; Non-alcoholic beverages with tea flavor; Non-alcoholic flavored carbonated beverages; Fruit

⁹ BL O/255/13

flavored drinks; Fruit flavoured drinks; Aperitifs, non-alcoholic; Fruit juice drinks; Fruit flavoured carbonated drinks.

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

Class 33:

Vodka.

26. This term is identical on a literal basis with the opponent's term *vodka*.

Grain-based distilled alcoholic beverages.

27. This wider term includes the opponent's narrower term *vodka*. The goods are therefore identical under the principle set out in *Meric*.

Alcoholic beverages, except beer; Alcoholic beverages (except beer); Beverages (Alcoholic -), except beer; Digestifs [liqueurs and spirits]; Distilled beverages; Beverages (Distilled -); Alcoholic beverages.

28. It is my view that the applicant's wider terms above all include the opponent's narrower term *vodka*, and therefore they are identical under the principle set out in *Meric*. However, the opponent has only argued that these goods are highly similar rather than identical. In line with the opponent's pleadings, I therefore find instead that the goods are highly similar.

Alcoholic seltzers; Alcoholic fruit cocktail drinks; Alcoholic cocktails; Aperitifs with a distilled alcoholic liquor base; Pre-mixed alcoholic beverages, other than beer-based; Alcoholic cocktails containing milk; Alcoholic cocktail mixes; Alcoholic cordials; Liqueurs; Cordials [alcoholic beverages]; Alcoholic tea-based beverage; Alcoholic carbonated beverages, except beer; Cocktails; Coffee-based liqueurs.

29. The applicant's goods above will have the same users and purpose as *vodka*, as they will be consumed by those over the age of 18 for pleasure. As they are liquid beverages which could be based upon vodka or have vodka as a principal ingredient, their respective nature is therefore similar. They will share the same trade channels, and are likely to appear in reasonably close proximity to one another within those retail environments. There may be a degree of complementarity in that vodka may be essential to the production of the goods above if they used vodka as one of their ingredients. Furthermore, given the close nature of *vodka* with the alcoholic goods above, consumers are likely to believe that the responsibility to produce the goods lies with the same undertaking. There may be an element of competition too, as some consumers may choose whether to buy *vodka* (to consume in its neat state or to mix with other beverages) or the mixed alcoholic goods above. Taking all these factors into account, I find a medium to high degree of similarity between the goods.

Flavored tonic liquors; Tonic liquor flavored with pine needle extracts (matsubazake).

30. It is my understanding that the goods above are not typically sold as vodka-based beverages. As such, there is an overlap in their nature in that they are both alcoholic

liquids, but they differ as to their specific type. Their users and purpose will be the same, as they will be consumed by those over the age of 18 for pleasure. They will be sold through the same trade channels and appear within reasonably close proximity to one another within those retail environments. I do not find that the goods are complementary as one is not essential to the other. I also find that they are unlikely to be in competition with each other as they have a different flavour profile to one another. Taking these factors into account, I find a low degree of similarity between the parties' goods.

Alcoholic bitters; Alcoholic aperitif bitters.

31. It is my understanding that these goods are alcoholic goods which are used to mix with spirits to produce cocktails. As such, there is an overlap in their nature in that they are both alcoholic liquids, but they differ as to their specific type. Their users and purpose will be the same, as they will be consumed by those over the age of 18 for pleasure. They will be sold through the same trade channels and appear within reasonably close proximity to one another within those retail environments. I do not find that the goods are complementary as one is not essential to the other. I also find that they are unlikely to be in competition with each other as they have a different flavour profile to one another, and in my experience, alcoholic bitters are generally not drunk in the same manner as *vodka*. Taking all these factors into account, I find that they are similar to a low to medium degree.

Flavoured brewed alcoholic malt beverages, except beers; Flavored brewed alcoholic malt beverages, except beers.

32. In my experience, these types of malt-based beverages are similar to beers. Neither party has filed any evidence to show what these goods are, but I am not aware that they typically contain *vodka*. Their nature will therefore overlap in that they are alcoholic liquids, but they differ as *vodka* is a spirit and the applicant's goods are brewed malt-based beverages. The goods will therefore differ as to their taste and ingredients, and so too will the alcoholic content of the goods. As alcoholic beverages, they will have the same users and purpose as *vodka* as they will be consumed for pleasure by those over the age of 18. At times they may be positioned in relatively close proximity in physical retail outlets such as supermarkets and off-licences,

although not necessarily in the same areas within the alcohol section. There may be an element of competition between the goods, as consumers may at times choose which type of alcoholic beverage to consume. I do not consider the goods to be complementary as the average consumer is unlikely to expect malt-related goods and to originate from the same undertaking as *vodka*, particularly given their different methods of production. Taking these factors into account, I find there to be a low degree of similarity between the competing parties' goods.

Class 43:

Food and drink catering; Catering of food and drink; Catering (Food and drink); Preparation of food and drink; Providing food and drink; Providing of food and drink; Provision of food and drink; Provision of food and drink in restaurants; Take-away food and drink services; Takeaway food and drink services; Providing food and drink in bistros; Catering of food and drinks; Serving food and drinks; Serving food and drink for guests; Hospitality services [food and drink]; Food and drink catering for banquets; Catering for the provision of food and drink; Serving food and drink for guests in restaurants; Providing food and drink for guests; Services for the preparation of food and drink; Food and drink preparation services; Food and drink catering for institutions; Food and drink catering for cocktail parties; Providing food and drink for guests in restaurants; Serving food and drink in restaurants and bars; Providing food and drink in restaurants and bars; Serving food and drink in Internet cafes; Preparation of food and beverages; Corporate hospitality (provision of food and drink); Services for providing food and drink; Provision of food and beverages; Services for the provision of food and drink; Providing food and drink in Internet cafes; Providing food and beverages; Take away food and drink services; Club services for the provision of food and drink; Preparation and provision of food and drink for immediate consumption; Catering services for the provision of food and drink; Catering for the provision of food and beverages; Arranging of wedding receptions [food and drink]; Providing of food and drink via a mobile truck.

33. The services above all relate to the provision of food and drink. They therefore differ in their nature and purpose compared to the opponent's *vodka*, which is a

physical beverage drunk for pleasure. However, the users of both will be those over the age of 18. They will have the same trade channels. The applicant's services providing drinks may be important for the sale of the opponent's *vodka*. Consequently, it is plausible that the average consumer may believe that an undertaking selling the opponent's goods is the same or connected to an undertaking providing the services above. On this basis, there is a degree of complementarity. However, the goods and services will not be in competition with each other. Taking these factors into account, I find a low degree of similarity between them.

Comparison of goods and services summary

34. Some similarity between goods is essential for engaging the test of the likelihood of confusion. In *eSure Insurance v Direct Line Insurance*,¹⁰ Lady Justice Arden stated that:

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

35. As I have found no similarity for the class 21 goods, the opposition under section 5(2)(b) fails in relation to them.

36. I will now go on to consider whether there exists a likelihood of confusion under section 5(2)(b) for the goods in classes 32 and 33, and the class 43 services which I have found to be either identical or similar (even if only to a low degree) to the opponent's goods.

Average consumer and the purchasing act

37. In *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc & Anor*,¹¹ the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)*,¹² where he pointed out that:

¹⁰ [2008] ETMR 77 CA

¹¹ [2025] UKSC 25

¹² [2024] EWCA Civ 262

- (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.

38. The average consumer for the goods will be the public at large, as well as trade customers. The cost of purchase is likely to vary, but overall, the price will be relatively inexpensive. They will be purchased on a frequent basis. Several factors may influence the average consumer when purchasing the goods, such as, inter alia, the type of ingredients used, the volume of alcohol, and the taste. For the lower priced goods such as the soft drinks or the inexpensive cans of premixed cocktails, the selection process is likely to be more casual than careful, but for higher priced goods

such as relatively expensive bottles of spirits, consumers will pay more attention. Taking into account all of these factors, it is my view that the average consumer will pay around a medium degree of attention, although I appreciate that this will be higher in the case of trade customers. The goods will be bought in retail outlets such as supermarkets, specialist drinks stores, or their online equivalents. The customer will self-select the goods from display shelves, or by selecting the image of their desired product if purchasing online. The visual component will therefore dominate the selection process. However, I do not discount the role that aural selection may play when purchasing, such as through word-of-mouth recommendations, making verbal orders, or when discussing the goods with staff.

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

Comparison of marks

40. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in *Bimbo SA v OHIM*¹³ that:

¹³ Case C-591/12P

“...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.”

41. It would be wrong, therefore, to dissect the trade marks artificially, although it is necessary to take into account the distinctive and dominant components of the marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

42. The respective trade marks are shown below:

The opponent's mark	The applicant's mark
	Green Vodka

43. In its counterstatement, the opponent refers to the competing marks' distinctive components, stating that the “Applicant’s sign incorporates the exact same distinctive and memorable elements as the Opponent’s Earlier Mark, namely “GREEN” and “VODKA”. In his witness statement, Mr Mason states that “[t]he distinctive core of the opponent’s mark lies in the “Green Mark” pairing, not in “Vodka””.

44. The opponent’s mark is a figurative mark containing the words “GREEN”, “VODKA”, and “MARK” written in upper case in a stylised typeface. The words “GREEN” and “MARK” are included within a green circular device, and the word “VODKA” is written horizontally in a ribbon-style device. Behind this in the centre of the mark is a gold-coloured bottle device set on a dark background. Due to the

principle that the eye is naturally drawn to elements of marks which can be read,¹⁴ it is considered that the verbal elements of the mark play a greater role in the mark's overall impression. Out of these, the words "GREEN MARK" will be the most dominant, given that they are the largest verbal elements. The word "VODKA" plays a smaller role in the mark's overall impression due to its smaller size, and its descriptive connection to the goods. The devices and the use of colour still contribute to the mark's overall impression, but to a much lesser degree.

45. The applicant's mark is a plain word mark consisting entirely of the words "Green Vodka" written in title case. In his witness statement, Mr Mason argues that "Green Vodka" is a two-word phrase that directly describes a type or characteristic of the product". He submits that "'Green Vodka' conveys the idea of a sustainable, eco-conscious, or naturally inspired vodka". In its statement of grounds, the opponent states that 'Green' "evokes concepts such as environmental friendliness, freshness, and a natural or organic quality, particularly relevant in the context of beverages". However, neither party has submitted any evidence to demonstrate that the average consumer in the UK would interpret the mark in this way. Although I acknowledge that there may be some consumers who will interpret the words "Green Vodka" in this way, it is my view that they will not constitute a significant proportion of consumers in the UK. It is my view that a significant proportion of consumers would see the reference to "Green" and interpret it as a reference to the colour green, given that it is an ordinary, everyday word. However, there is no evidence that consumers would interpret the words "Green Vodka" as meaning green-coloured vodka. In my own experience, vodka is not typically sold as anything other than a clear-coloured spirit. I am therefore of the opinion that consumers would not view "Green" as an adjective which qualifies the word "Vodka". As "Vodka" is either descriptive, non-distinctive, or otherwise allusive of beverages, it is lower in distinctive character than "Green". As such, I am of the view that "Green" dominates the applicant's mark. The word "Vodka" still contributes, but to a lower degree.

Visual comparison

¹⁴ See paragraph 37 of *Wassen International Ltd v OHIM (SELENIUM-ACE)*, Case T-312/03

46. In its statement of grounds, the opponent submits that “[t]he words “GREEN” and “VODKA” in both trade marks are visually identical, therefore, the overall visual presentation of the respective trade marks shares significant common elements”. In its counterstatement, the applicant submits that the word ‘Mark’ “fundamentally alters its visual... identity”.

47. The competing marks both contain the words “Green”/“GREEN” and “Vodka”/“VODKA”. The presence of both words in the competing marks creates visual similarity. Whilst the opponent’s mark is written in upper case and the applicant’s mark is written in title case, this does not constitute a visual difference. This is because word marks are protected regardless of the case type as per *LA Superquímica v European Union Intellectual Property Office (EUIPO)*,¹⁵ in which the GC held at [39] that word-only marks protect the word or words contained in the mark in whatever case, colour or typeface. The difference in capitalisation and use of a stylised typeface therefore do not constitute significant visual differences. The competing marks differ visually as the opponent’s mark also contains the word “MARK” (which is as visually dominant as “GREEN”) and the circular and ribbon devices, and the bottle device. Bearing in mind my analysis of the marks’ overall impressions, I am of the view that the marks are visually similar to a low to medium degree.

Aural comparison

48. In its statement of grounds, the opponent submits that the competing marks “share the same phonetic elements”. It argues therefore the “the overall phonetic structure of the respective trade marks is highly similar or at the very least similar”. In his witness statement, Mr Mason states that “[t]he presence of the additional word “Mark” in the earlier trade mark is a material and distinguishing element”, giving the opponent’s mark “a different rhythmic...and phonetic identity”.

49. The competing marks are aurally similar as they both contain the words “Green” and “Vodka”. The beginnings of words tend to have more aural impact than the ends,¹⁶ which, in my view, results in the aural similarity created by the identical initial elements being more significant. The competing marks differ aurally as the opponent’s mark

¹⁵ Case T-24/17

¹⁶ See paragraph 81 of *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02.

contains the word “Mark” as the second word. Bearing in mind my analysis of the marks’ overall impressions, I am of the view that the marks are aurally similar to a medium degree.

Conceptual comparison

50. As stated above, in its counterstatement, the opponent submits that the term ‘GREEN’ relates to “environmental friendliness, freshness, and a natural or organic quality, particularly relevant in the context of beverages”, and that ‘VODKA’ in the parties’ marks “directly links them to the same product category”. It also argues that the word ‘MARK’ in the opponent’s mark “adds a branding layer but does not detract from the shared themes of “GREEN” and “VODKA”.

51. In Mr Mason’s witness statement, the applicant states that the term “Green Vodka” will be understood as a descriptive reference to “a sustainable, eco-conscious, or naturally inspired vodka, aligning with modern consumer trends and expectations”. He also argues that the term “GREEN MARK VODKA” is “more abstract” as “the word ‘Mark’ suggests a label, stamp, or brand insignia”, and therefore “does not convey any ecological or environmental message”. In its counterstatement, the applicant argues also that the words ‘GREEN MARK’ “refers to the “green mark” seal of approval by the Russian governments (sic) quality assurance agency according to their amazon sellers page” and provides a hyperlink to demonstrate this.

52. However, even if ‘green mark’ is referring to the approval in the way that the applicant suggests, it is my view that there is no evidence that a significant proportion of consumers would understand it in this way, and therefore it is unlikely to be perceived in this way. Instead, it is my view that the average consumer would understand the word “GREEN” as a reference to the colour. Cambridge Dictionary defines the word “MARK” in a number of ways, including as a “a symbol that is used for giving information”. Given these are both ordinary, dictionary-defined words, it is my view that the average consumer would extrapolate the words’ individual meanings without attributing a specific meaning to the combined words ‘GREEN MARK’. I therefore do not consider that they have a unitary meaning, as the two words do not combine to create a unitary phrase that is meaningful in totality to the average consumer.

53. The competing marks are conceptually similar as they both contain the reference to “GREEN”, which will be interpreted as a reference to the colour, and the word “VODKA”, which will be understood as a reference to a kind of alcoholic spirit. The competing marks differ as the opponent’s mark also contains the word “MARK” which has its own concept. Whilst the bottle device in the opponent’s mark also has its own concept, it is non-distinctive in relation to the beverage-related goods and services, and therefore this is not a significant point of conceptual dissimilarity. Bearing in mind my earlier analysis of the marks’ overall impressions, I find that they are conceptually similar to each other to a medium degree.

Distinctive character of the earlier mark

54. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*,¹⁷ 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

¹⁷ Case C-342/97

commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51)."

55. Registered trade marks possess various degrees of inherent distinctive character; marks which are suggestive or allusive of a characteristic of the goods and services tend to be at the lower end of the scale, whereas invented words with no allusive qualities tend to be at the higher end of the scale. A range of marks will fall in between, such as dictionary words with no obvious connection to the goods and services.

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

57. Neither party has specified the level of inherent distinctiveness of the opponent's mark. However, in its statement of grounds, the opponent refers to the words "Green" and "Vodka" in the opponent's mark as being "distinctive and memorable". In Mr Mason's witness statement, the opponent refers to the "low distinctiveness of shared elements".

58. As stated previously, the word "GREEN" will be understood as referring to a colour, and the word "MARK" will be interpreted as a type of symbol. The word "VODKA" is not distinctive as it describes the class 33 goods. The remaining elements, such as the bottle device, the shape devices, and the use of colour will be viewed as decorative in nature and will therefore also be seen as non-distinctive. Overall, I find that the opponent's mark in totality has a medium level of inherent distinctive character.

Global assessment – conclusions on likelihood of confusion

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

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

61. In its statement of grounds, the opponent submits that "[s]ince the goods and services that are covered by the Application are either identical or highly similar or similar to the goods protected by the Opponent's Earlier Mark, there is a likelihood of consumer confusion including a likelihood of false association". In Mr Mason's witness statement, the applicant submits that there is "no likelihood that the average consumer would mistake one mark for the other" or "assume that the goods come from the same or economically linked undertakings".

62. Earlier in this decision I found that the applicant's goods and services range from being identical to being similar to being dissimilar to the opponent's goods. The average consumer of the goods and services will be the general public and trade customers. The average consumer is likely to pay a medium degree of attention when selecting the class 32 and 33 goods, and a medium amount of attention when selecting the class 43 services. The goods and services will primarily be selected through visual means, although I do not discount an aural element to the selection process. I have found the marks to be visually similar to a low to medium degree, aurally similar to a medium degree, and conceptually similar to a medium degree. The earlier mark has a medium level of inherent distinctive character.

63. It is my view that, when accounting for imperfect recollection, I consider that the average consumer, when paying a medium degree of attention, is likely to misremember the marks' differences, such as the addition of the word "MARK" in the opponent's mark and the figurative elements. It is my view that the word "Green" is not allusive or non-distinctive in relation to the goods and services, and it features at the beginning of both marks where words have the largest visual and aural impact. It is my view that consumers will overlook the differing elements of the marks, and retain

the reference to the word “Green”. Factors in support of this finding include the marks’ level of aural and conceptual similarities. It is therefore considered that consumers would remember the word ‘Green’ in relation to vodka and misremember the other elements, given that the word ‘mark’ would have no strong conceptual hook for the consumer, and the decorative elements are not particularly distinctive. I therefore find that there is the likelihood of direct confusion.

64. However, taking into account the interdependency principle, I only find this to be the case for the goods and services which are similar to a medium degree or higher. I do not find this to be the case in respect of the goods and services which are similar to the opponent’s goods where the degree of similarity is lower than medium. This is on the basis that, notwithstanding the common dominant words, the marks are not sufficiently similar to result in indirect confusion where there is less than a medium level of similarity between the goods and services.

65. However, if I am wrong in this finding, I now go on to consider indirect confusion. In *L.A. Sugar Limited v By Back Beat Inc*¹⁸, Mr Iain Purvis Q.C., as the Appointed Person, explained that:

“16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: ‘The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark’.

¹⁸ BL O/375/10

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)."

66. I bear in mind that these categories are not intended to be an exhaustive list. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors*¹⁹, Arnold LJ approved Mr Purvis's formulation but added:

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

67. It is not sufficient that a mark merely calls to mind another mark (as per *Duebros Limited v Heirler Cenovis GmbH*²⁰). This is mere association not indirect confusion. A

¹⁹ [2021] EWCA Civ 1207

²⁰ BL O/547/17

finding of indirect confusion should not be made merely due to a shared element within marks. As per *L.A. Sugar Limited v By Back Beat Inc*²¹ (set out above), indirect confusion should be identified in cases where the average consumer is likely to notice the differences between the competing marks but assume an economic link between the two undertakings based on their similarities.

68. I also consider the relevance of *Medion v Thomson*²² and the subsequent case law. In *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another*,²³ Arnold J. (as he then was) considered the impact of the CJEU's judgment in *Bimbo*²⁴ on the court's earlier judgment in *Medion*. The judge said:

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

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

20. The second point is that this principle can only apply in circumstances where the average consumer would perceive the relevant part of the composite mark to have distinctive significance independently of the whole. It does not apply where the average consumer would perceive the composite

²¹ BL O/375/10

²² Case C-120/04

²³ [2015] EWHC 1271 (Ch)

²⁴ Case C-591/12P

mark as a unit having a different meaning to the meanings of the separate components. That includes the situation where the meaning of one of the components is qualified by another component, as with a surname and a first name (e.g. BECKER and BARBARA BECKER).

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

69. It is my view that the average consumer of the goods and services would not interpret the two words “Green” and “Vodka” as being a complete unit which has its own meaning separate from the meaning of the two constituent parts. The distinctive significance of “Green” is therefore independent from the distinctive significance of the whole mark “Green Vodka”. On this basis, the marks may be confused as a result of the moderately distinctive shared element (which has an independent distinctive significance within the applicant’s mark) being identical to the first word in the opponent’s mark “GREEN MARK VODKA”. I am of the view that the average consumer may believe the mark “Green Vodka” to indicate a commercial connection between the respective undertakings. On this basis, I find that there is a likelihood of indirect confusion, notwithstanding the difference between the competing marks.

70. However, taking into account the interdependency principle, I only find this to be the case for the goods and services which are similar to a medium degree. I do not find this to be the case in respect of the goods and services which are similar to the opponent’s goods where the degree of similarity is lower than medium. This is on the basis that, notwithstanding the common dominant words, the marks are not sufficiently similar to result in indirect confusion where there is less than a medium level of similarity between the goods and services.

71. The opposition therefore succeeds in relation to the following goods:

Class 33: Vodka; Grain-based distilled alcoholic beverages; Alcoholic beverages, except beer; Alcoholic beverages (except beer); Beverages

(Alcoholic -), except beer; Digestifs [liqueurs and spirits]; Distilled beverages; Beverages (Distilled -); Alcoholic beverages; Alcoholic seltzers; Alcoholic fruit cocktail drinks; Alcoholic cocktails; Aperitifs with a distilled alcoholic liquor base; Pre-mixed alcoholic beverages, other than beer-based; Alcoholic cocktails containing milk; Alcoholic cocktail mixes; Alcoholic cordials; Liqueurs; Cordials [alcoholic beverages]; Alcoholic tea-based beverage; Alcoholic carbonated beverages, except beer; Cocktails; Coffee-based liqueurs

72. The opposition fails in respect of the following goods and services:

Class 21: *Liqueur cups; Liqueur flasks; Drinking bottles; Cocktail glasses.*

Class 32: *Cocktails, non-alcoholic; Non-alcoholic cocktails; Kvass [non-alcoholic beverages]; Non-alcoholic fruit cocktails; Non-alcoholic sparkling fruit juice drinks; Non-alcoholic grape juice beverages; Non-alcoholic cocktail mixes; Cordials [non-alcoholic]; Non-alcoholic cordials; Non-alcoholic fruit vinegar beverages; Non-alcoholic drinks; Juice drinks; Non-alcoholic fruit drinks; Fruit juice beverages (Non-alcoholic -); Non-alcoholic fruit juice beverages; Cordials (non-alcoholic beverages); Non-alcoholic beverages flavoured with tea; Non-alcoholic beverages flavored with tea; Non-alcoholic beverages flavoured with coffee; Apple juice drinks; Non-alcoholic cocktail bases; Non-alcoholic beverages flavored with coffee; Carbonated non-alcoholic drinks; Non-alcoholic beverages with tea flavor; Non-alcoholic flavored carbonated beverages; Fruit flavored drinks; Fruit flavoured drinks; Aperitifs, non-alcoholic; Fruit juice drinks; Fruit flavoured carbonated drinks.*

Class 33: *Flavored tonic liquors; Tonic liquor flavored with pine needle extracts (matsuba-zake); Alcoholic bitters; Alcoholic aperitif bitters; Flavoured brewed alcoholic malt beverages, except beers; Flavored brewed alcoholic malt beverages, except beers.*

Class 43: *Food and drink catering; Catering of food and drink; Catering (Food and drink); Preparation of food and drink; Providing food and drink; Providing of food and drink; Provision of food and drink; Provision of food and drink in restaurants; Take-away food and drink services; Takeaway food and drink*

services; Providing food and drink in bistros; Catering of food and drinks; Serving food and drinks; Serving food and drink for guests; Hospitality services [food and drink]; Food and drink catering for banquets; Catering for the provision of food and drink; Serving food and drink for guests in restaurants; Providing food and drink for guests; Services for the preparation of food and drink; Food and drink preparation services; Food and drink catering for institutions; Food and drink catering for cocktail parties; Providing food and drink for guests in restaurants; Serving food and drink in restaurants and bars; Providing food and drink in restaurants and bars; Serving food and drink in Internet cafes; Preparation of food and beverages; Corporate hospitality (provision of food and drink); Services for providing food and drink; Provision of food and beverages; Services for the provision of food and drink; Providing food and drink in Internet cafes; Providing food and beverages; Take away food and drink services; Club services for the provision of food and drink; Preparation and provision of food and drink for immediate consumption; Catering services for the provision of food and drink; Catering for the provision of food and beverages; Arranging of wedding receptions [food and drink]; Providing of food and drink via a mobile truck.

Conclusion

73. The opposition under section 5(2)(b) has been partially successful. Subject to any successful appeal, the application be refused for the class 33 goods highlighted above. However, the application will proceed to registration for the goods in classes 21 and 32, the class 43 services, and also the class 33 goods listed above, as the opposition has failed in respect of these.

Costs

74. The applicant has enjoyed the most success and is entitled to a contribution towards its costs. However, as it has not instructed professional representatives, it was invited by the Tribunal to indicate whether it intended to make a request for an award of costs, including accurate estimates of the number of hours spent on a range of given activities relating to defending the proceedings. It was made clear by letter dated 13

November 2025 that the request for costs should be provided by 11 December 2025. It made it clear that if the costs proforma was not completed and returned by this date, costs may not be awarded. The applicant did not return a completed pro-forma to the Tribunal and, on this basis, no costs are awarded.

Dated this 30th day of June 2026

K SERRAVALLE

For the Registrar