

O/0585/26

TRADE MARKS ACT 1994

**CONSOLIDATED PROCEEDINGS**

IN THE MATTER OF APPLICATION NOS. UK00003698329 AND UK00003698369

BY INTERNATIONAL FOODSTUFFS CO. LLC

TO REGISTER THE TRADE MARKS:



IN CLASS 30

AND

IN THE MATTER OF CONSOLIDATED OPPOSITIONS THERETO

UNDER NOS. 431144 AND 431145 BY

NOMAD FOODS EUROPE LIMITED

## BACKGROUND AND PLEADINGS

1. On 21 September 2021, International Foodstuffs Co. LLC (“the applicant”) applied to register the trade marks shown on the cover page of this decision (together “the applications”), in the UK. The applications were filed pursuant to Article 59 of the Withdrawal Agreement between the UK and the EU, the effect of which is that the applicant can rely upon the EU filing date for the applications, being 10 August 2020.

2. The applications were published for opposition purposes on 26 November 2021, and protection is sought for the following goods:

Class 30      Ice Creams.

3. On 18 February 2022, the applications were opposed by Nomad Foods Europe Limited (“the opponent”) based upon sections 5(2)(b) and 5(3) of the Trade Marks Act 1994 (“the Act”).

4. A decision was issued by a different Hearing Officer on 8 February 2023.<sup>1</sup> In that decision, the Hearing Officer found that the opposition failed under both sections 5(2)(b) and 5(3) of the Act. That decision was subject to appeal, which culminated in the decision of Mr Philip Harris, sitting as the Appointed Person, issued on 4 December 2023.<sup>2</sup> In that decision, Mr Harris stated:

“75. The Appeal succeeds as regards:

- a) Proof of genuine use as regards “sweet dumplings, pastry including fruit and custard-based pastries”;
- b) The failure to compare “vegetarian frozen foods” with the Contested Goods.

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<sup>1</sup> BL O/0139/23

<sup>2</sup> BL O/1148/23

76. Given their findings on proof of use/similarity of goods, the Hearing Officer did not proceed to consider the other elements of the Opponent's case under S. 5(2)(b). It is not appropriate for me to determine them for the first time on Appeal. The case is therefore remitted to the Registrar for determination, by a different hearing officer, as regards the Opponent's case under S. 5(2)(b) only in the light of:

- a) The amendment of the fair specification (which otherwise stands) to include a category reflective, as the Registrar shall determine, of my finding of genuine use of the Earlier Trade Marks in relation to sweet dumplings, pastry including fruit and custard-based pastries.
- b) The similarity, if any, of "vegetarian frozen foods" to the Applicant's "ice creams".

5. This decision is, therefore, concerned with the section 5(2)(b) ground of opposition only. In that regard, the opponent relies upon the following trade marks:

IGLO

UKTM no. 905740238

Filing date: 7 March 2007

Registration date: 25 February 2008

("the First Earlier Mark")

IGLO

UKTM no. 909314261

Filing date: 13 August 2010

Registration date: 19 October 2012

("the Second Earlier Mark")

6. The opponent relies upon all of the goods for which the marks are registered as set out in the Annex to this decision. The opponent claims that the marks are similar, and goods are similar, with the result that there is a likelihood of confusion.

7. The applicant filed counterstatements denying the grounds of opposition and putting the opponent to proof of use of the earlier marks.

8. Following the appeal, the opponent requested to be heard. After a number of stay requests filed by the parties, a hearing date was listed for 7 January 2026. However, on 31 December 2025, the Tribunal received a request that the hearing be vacated and the matter be decided on the papers. Consequently, this decision is taken following a careful consideration of all the papers on file.

## **REPRESENTATION**

9. The applicant was originally represented by Fox Williams LLP, but is now represented by Bristows LLP.

10. The opponent is represented by Haseltine Lake Kempner LLP.

## **EVIDENCE AND SUBMISSIONS**

11. The opponent filed evidence in chief in the form of the witness statement of Rosanna Darcy dated 20 July 2022, which is accompanied by 13 exhibits (Exhibits 1 to 13). Ms Darcy is a Legal Advisor, employed by the opponent. This is a position she had held for over 5 years at the date of her statement.

12. The applicant filed written submissions during the evidence rounds dated 20 September 2022.

13. Both parties filed written submissions in lieu of a hearing dated 17 November 2022.

14. Following the request that this remitted matter be considered on the papers, the parties were given a further opportunity to file written submissions in lieu of a hearing. The applicant did so on 20 January 2026 and the opponent did so on 26 February 2026.

## **RELEVANCE OF EU LAW**

15. 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.

## **DECISION**

### **Proof of use**

16. Given their earlier filing dates, the trade marks upon which the opponent relies qualify as earlier trade marks pursuant to section 6 of the Act. As they had been registered for more than 5 years at the filing date of the applications in issue, they are subject to the use provisions of section 6A of the Act.

17. The previous Hearing Officer found the following to be a fair specification:

“Class 29: Meat, fish, poultry; frozen prepared meals; chilled foods consisting predominantly of fish; chilled meals made from fish; cooked meals consisting principally of fish; fish cakes; frozen fish cakes; fish fillets; frozen fish fillets; fish fingers; frozen fish fingers; fish products; fish products being fresh; fish products being frozen; fish products being preserved; fish with chips; frozen cooked fish; frozen fish; frozen prepared meals consisting principally of fish; pre-cooked dishes incorporating [predominantly] fish; processed fish; frozen scampi; steaks of fish; frozen steaks of fish; chicken; chicken pieces; chicken products; cooked

chicken; frozen chicken; deep frozen chicken; fried chicken; frozen fried chicken; prepared meals consisting [principally] chicken; chicken nuggets; frozen prepared meals consisting principally of chicken; garden peas; frozen peas; vegetarian frozen foods; frozen prepared meals consisting principally of vegetables; frozen vegetables; frozen vegetables packed in single portions; burgers; frozen burgers; vegetable burgers; frozen vegetable burgers; chilled ready meals; frozen ready meals; individual ready meals; ready cooked meals consisting wholly or substantially wholly of fish; frozen ready cooked meals consisting wholly or substantially wholly of fish; ready cooked meals consisting wholly or substantially wholly of meat; frozen ready cooked meals consisting wholly or substantially wholly of meat; ready cooked meals consisting wholly or substantially wholly of poultry; frozen ready cooked meals consisting wholly or substantially wholly of poultry; ready cooked meals consisting wholly or substantially wholly of vegetables; frozen ready cooked meals consisting wholly or substantially wholly of vegetables; frozen ready meals.

Class 30: Deep frozen pasta; ready cooked meals consisting wholly or substantially wholly of pasta; frozen ready meals consisting wholly or substantially wholly of pasta.” (my emphasis)

18. To be clear, all of the goods listed here relate to the specification of the Second Earlier Mark. Only those goods that are underlined are applicable to the specification of the First Earlier Mark. In addition to the findings of the Hearing Officer, Mr Harris found genuine use for “sweet dumplings, pastry including fruit and custard-based pastries”. Mr Harris continued:

“54. Genuine use for “sweet dumplings, pastry including fruit and custard-based pastries” having been shown, that leaves open the second question, namely how that translates into the fair specification – those goods alone, for the wider category “desserts and puddings” or some other sub-category? On that issue, I consider the proper course is to remit the matter to the Registrar.”

I must, therefore, begin by determining a fair specification in light of that finding.

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

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

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

“245. First, it is necessary to identify the goods or services in relation to which the mark has been used during the relevant period.

246. Secondly, the goods or services for which the mark is registered must be considered. If the mark is registered for a category of goods or services which is sufficiently broad that it is possible to identify within it a number of subcategories capable of being viewed independently, use of the mark in relation to one or more of the subcategories will not constitute use of the mark in relation to all of the other subcategories.

247. Thirdly, it is not possible for a proprietor to use the mark in relation to all possible variations of a product or service. So care must be taken to ensure this exercise does not result in the proprietor being stripped of protection for goods or services which, though not the same as those for which use has been proved, are not in essence different from them and cannot be distinguished from them other than in an arbitrary way.

248. Fourthly, these issues are to be considered having regard to the perception of the average consumer and the purpose and intended use of the products or services in issue. Ultimately it is the task of the tribunal to arrive at

a fair specification of goods or services having regard to the use which has been made of the mark.

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

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

22. My understanding, which is supported by the opponent’s evidence, is that sweet dumplings are a type of dough-based dessert. In my view, this constitutes a sub-category of “puddings” in the specification of the First Earlier Mark and “desserts and puddings” in the specification of the Second Earlier Mark. Having reviewed the evidence, the fruit and custard-based pastries sold by the opponent appear to be items such as strudels, which are types of desserts. In my view, pastry-based desserts is an appropriate sub-category to reflect the use shown. I do not consider that use in relation to these two sub-categories alone justifies the retention of the broader terms within the specifications (although, for reasons that will become clear below, nothing will turn on this). Consequently, in addition to the findings of the original hearing officer, I find a fair specification for both earlier marks to include:

Class 30      Sweet dumplings; pastry-based desserts.

23. For the avoidance of doubt, whilst I note in its written submissions that the opponent has pointed to a wider range of terms upon which it suggests that it should be permitted to rely, nothing will turn on this for reasons that will become clear below. Consequently, I do not consider it necessary to assess this list of terms in any further detail.

### **Section 5(2)(b)**

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

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

(a)...

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

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

25. Section 5A of the Act is as follows:

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

26. 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**

27. In the judgment of the Court of Justice of the European Union (“CJEU”) in *Canon*, Case C-39/97, the court stated at paragraph 23 of its judgment that:

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

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

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

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

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

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

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

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

29. Another factor in assessing similarity is to consider the extent to which the goods at issue may be regarded as “complementary”, which case law describes as meaning that “... 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 the responsibility for those goods lies with the same undertaking.”<sup>3</sup>

30. Terms in specifications should be given their ordinary, natural or core meaning, but this should be balanced against a need to ensure that terms are not interpreted too narrowly.<sup>4</sup> For the purposes of assessing similarity, it is permissible to group specified terms together where they are sufficiently comparable in essentially the same way for essentially the same reasons.<sup>5</sup>

31. In the original hearing officer’s decision, she made the following finding with regard to the comparison between the applicant’s specification and the terms that she had found the opponent was entitled to rely upon:

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

<sup>4</sup> *YouView Ltd v Total Ltd* [2012] EWHC 3158 (Ch)

<sup>5</sup> See *Separode Trade Mark* (BL O/399/10)

“78. Other than both parties’ goods being frozen foodstuff and directed at the general public, consumers will not consider that these goods are similar. Even if they happen to be sold in the frozen section of retail premises they are unlikely to be in the same cabinets; ice creams would be displayed in separate units to savoury foodstuff. The goods may well be sold together in supermarkets and will thus on a very general level overlap in trade channels, but this is insufficient in accordance with the caselaw. The goods are manufactured from different ingredients, via different processes. The goods differ in nature and purpose, they do they [sic] compete with one another. There is no complementarity between them, where one could be used or was indispensable to the other, so that consumers would think that the same or linked undertakings were responsible. The goods are dissimilar. No consumer would determine that there would be any identity or similarity in the goods other than the fact that they are consumable. The fact that they are all foods found in the frozen compartments of supermarkets is not enough for similarity.”

32. Insofar as the comparison relates to “vegetarian frozen foods”, Mr Harris has directed that I consider the comparison anew. Plainly, I will also have to consider the assessment anew for the additional terms upon which I have found that the opponent is entitled to rely. However, for the avoidance of doubt, in relation to all other terms that the original Hearing Officer found that the opponent could rely upon, I agree with this assessment and apply the same here.

#### The comparison with “vegetarian frozen foods”

33. As noted above, when interpreting the meaning of terms in specifications, it is important to give terms their ordinary, natural and core meaning, but to avoid construing terms overly narrowly. I have given a great deal of consideration to the meaning that the average consumer would attribute to this term. I can see that there are two competing arguments: 1) that it covers any frozen food which is vegetarian or 2) that it covers vegetarian substitutes for food that would otherwise contain meat/fish.

34. After much consideration, my view coincides with that of the applicant. I find that the inclusion of the word vegetarian in the term means that the average consumer would understand this as referring to goods which are vegetarian alternatives for products that might otherwise contain meat/fish (such as those that would be found in the “vegetarian” section of the freezer aisle). As ice cream is always a vegetarian product, rather than a substitute for a meat/fish product, I do not consider it to be identical to “vegetarian frozen foods”. In my view, the same comparison applies to this term as set out by the original Hearing Officer above. I find all of the same findings to be true here and, for the same reasons, find the goods to be dissimilar.

#### The comparison with “sweet dumplings” and “pastry-based desserts”

35. These goods overlap in purpose with the applicant’s “ice cream”, all being foods that would be eaten as a dessert. They will differ in nature, with the applicant’s goods being dough/pastry based and the opponent’s goods being dairy-based. The goods will be sold through the same trade channels, such as supermarkets. To my understanding, it is possible for sweet dumplings and pastry-based desserts to be sold either fresh or frozen. In the latter case, the parties’ respective goods will be sold in proximity to each other (i.e. in the frozen dessert section of a supermarket). The goods may be in competition, given the overlapping purpose. I do not consider the goods to be complementary, as one is not important or indispensable for the other. The users will plainly overlap. Taking all of this into account, I find there to be a medium degree of similarity between the goods.

#### **The average consumer and the nature of the purchasing act**

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

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

(a) Consumers who are ill-informed or careless, or consumers with specialised knowledge or who are excessively careful are excluded from consideration;

(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 a member of the general public. The goods are unlikely to be particularly expensive, but factors such as flavour, ingredients and sugar content will be taken into account during the purchasing process. Consequently, I find that a medium degree of attention will be paid during the purchasing process.

39. The goods are likely to be self-selected from the shelves of a retail outlet or online equivalent. Consequently, I find that the purchasing process will be predominantly visual. However, I do not discount an aural component given that advice may be sought from retail assistants.

### **Distinctive character of the earlier marks**

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

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-2779, 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)."

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

42. The earlier marks consist of the word IGLO. For a significant proportion of average consumers, I find that the earlier marks will be viewed as a misspelling of the word IGLOO. For another significant proportion of average consumers, I find that the earlier marks will be read as the word IGLOO, with the average consumer overlooking the missing O at the end of the word. As such, for both of these groups of average consumer, I find there to be an allusive element in respect of frozen goods. In my view, the earlier marks are inherently distinctive to between a low and medium degree.

43. In its written submissions, the opponent states:

"The [decision of the previous hearing officer] agrees that the Opponent has a reputation (albeit in the EU) in the mark of the Earlier Registrations. If a mark has a reputation, then it should also be concluded that the mark has a level of enhanced distinctiveness by virtue of extensive use."

44. The previous hearing officer did find that the opponent had a reputation (although not in relation to the goods that I have found to be similar to the applied-for goods). However, that reputation existed in relation to the EU market. By contrast, the relevant market for assessing enhanced distinctiveness is the UK market only. There is no evidence of advertising expenditure, overall turnover or market share in relation to the goods in issue. Consequently, I find that the evidence does not support a finding that the opponent had the benefit of enhanced distinctiveness in relation to the relevant goods in the UK at the relevant date.

## Comparison of trade marks

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

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

46. 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.

47. For reasons that will become clear below, I will conduct my comparison from the perspective of average consumers who fall within the two categories discussed above. With that in mind, the respective trade marks are shown below:

| Opponent's trade marks                  | Applicant's trade marks                                                                                                                                                                                                                                                                                                                                                                |
|-----------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p data-bbox="454 302 534 336">IGLO</p> | <div data-bbox="885 336 1316 683">  </div> <p data-bbox="949 705 1252 750">(the First Application)</p> <div data-bbox="893 784 1332 1108">  </div> <p data-bbox="925 1142 1268 1187">(the Second Application)</p> |

### Overall Impression

48. The opponent's marks consists of the word IGLO. There are no other elements to contribute to the overall impression, which lies in the word itself.

49. The First Application consists of the word IFFCO, which appears above the word IGLOO, which is presented in a larger, more stylised font. These elements are presented on a rounded background, with a curved line beneath the letters OO. The mark is presented in greyscale. The eye is naturally drawn to the elements of the mark that can be read, meaning that the words IFFCO IGLOO play the greatest role in the overall impression. Although the word IGLOO is larger, the word IFFCO appears first (as it is above the word IGLOO) and so I find that both words play an equal role in the overall impression. The device/stylisation elements play a lesser role.

50. The Second Application consists of the word IGLOO in a relatively small font, presented on a rectangular background, again with a curved line under the letters OO. All of this is presented on a rounded background, next to a large penguin device. Beneath the curved background (and the elements within it) are the words ICE CREAM FUN FOR EVERYONE! in a title case font. The mark is presented in grey scale. The eye is naturally drawn to the elements of the mark that can be read. However, given that the words ICE CREAM FUN FOR EVERYONE! are likely to be recognised as a non-distinctive slogan and given the size of the penguin device compared to the word IGLOO, I find that the word IGLOO and the penguin device play a roughly equal role in the overall impression. The slogan and the other device/stylistic elements play a lesser role.

### Visual Comparison

#### *The First Application*

51. The First Application and the opponent's marks overlap in the presence of the letters IGLO. However, there is an additional O on the end of the word in the First Application.<sup>6</sup> The word IFFCO and the device elements are also points of visual difference. I bear in mind that the opponent's marks are word-only marks and so could be used in any typeface. Taking all of this into account, I find the marks to be visually similar to between a low and medium degree.

#### *The Second Application*

52. Again, the marks overlap in the presence of the letters IGLO. However, the additional O at the end of that word in the Second Application, the device elements (particularly the penguin device which plays an equal role in the overall impression), the slogan and the stylistic elements all act as points of visual difference. I bear in

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<sup>6</sup> I have borne in mind that the words IGLO/IGLOO are only four and five letters respectively, so differences will have more of an impact than they might do in longer words (see, *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02 and *MANDO T-792/17*). However, the fact that the difference appears at the end of the words makes it less impactful than if it appeared at the start (see *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02).

mind, again, that the opponent's marks are word only marks and so could be used in any typeface. Taking all of this into account, I find the marks to be visually similar to a low degree.

### Aural Comparison

#### *The First Application*

53. The opponent's marks are likely to be pronounced IGG-LOO, either because the average consumer views it as the word IGLOO, overlooking the missing O at the end, or because they view it as a misspelling of the word IGLOO. The First Application is likely to be pronounced IFF-CO-IGG-LOO. Consequently, I find the marks to be aurally similar to a medium degree.

#### *The Second Application*

54. In the Second Application, I find it unlikely that the words ICE CREAM FUN FOR EVERYONE! will be pronounced, due to their non-distinctive nature. Consequently, I find that the Second Application will be articulated as IGG-LOO. That being the case, I find the marks to be aurally identical. If I am wrong in that finding and the words ICE CREAM FUN FOR EVERYONE! are articulated, the aural similarity will be medium.

### Conceptual Comparison

#### *The First Application*

55. As discussed above, I find the word IGLO likely to be understood as conveying the concept of an igloo for a significant proportion of average consumers. This will be a point of conceptual overlap between the marks. The word IFFCO has no concept, and I find it unlikely that the device elements will convey any meaning. Consequently, to the extent that any concept is conveyed by the marks, they are identical.

### *The Second Application*

56. The same point of similarity applies with the Second Application. However, the words ICE CREAM FUN FOR EVERYONE! are a point of conceptual difference, albeit not a distinctive one. The concept conveyed by the penguin device is also a point of conceptual difference. In my view, the marks are conceptually similar to a medium degree.

### **Likelihood of confusion**

57. 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 them and the goods down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the goods may be offset by a greater degree of similarity between the marks, and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the earlier marks, the average consumer for the goods and the nature of the purchasing act. 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.

58. I have found as follows:

- a. The goods are similar to a medium degree.
- b. The average consumer is a member of the general public who will pay a medium (or average) degree of attention during the purchasing process.
- c. The purchasing process is predominantly visual, although I do not discount an aural component.

- d. The First Application and the earlier marks are visually similar to between a low and medium degree, aurally similar to a medium degree and conceptually identical.
- e. The Second Application and the earlier marks are visually similar to a low degree, aurally identical or similar to a medium degree (depending on how they are articulated) and conceptually similar to a medium degree.
- f. The earlier marks are inherently distinctive to between a low and medium degree.

59. Given the visual differences between the applications and the earlier marks, I can see no basis for concluding that they will be mistakenly recalled or misremembered as each other. I do not consider it likely that the word IFFCO in the First Application or the penguin device in the Second Application (both of which play an equal role in the overall impression of the respective applications) will be overlooked. Consequently, I do not consider there to be a likelihood of direct confusion.

60. I will now consider whether there is a likelihood of indirect confusion. In *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, Mr Iain Purvis Q.C., as the Appointed Person, explained that:

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

common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark’.

17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

- (a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right (‘26 RED TESCO’ would no doubt be such a case).
- (b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as ‘LITE’, ‘EXPRESS’, ‘WORLDWIDE’, ‘MINI’ etc.).
- (c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension (‘FAT FACE’ to ‘BRAT FACE’ for example).<sup>7</sup>

61. Given that the earlier marks are inherently distinctive to only between a low and medium degree, category (a) of *LA Sugar* cannot apply. The additional elements in the applications are not non-distinctive, and so category (b) cannot apply. With regard to category (c), I have balanced carefully the fact that the earlier marks are inherently distinctive to only between a low and medium degree, but that the common element is likely to convey the same conceptual message for a significant proportion of average consumers. I bear in mind that a weak distinctive character does not preclude a likelihood of confusion.<sup>7</sup> In my view, a significant proportion of average consumers will mistake the word IGLO for the word IGLOO. This perceived common reference to an igloo is likely to result in the average consumer believing that the marks originate from

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<sup>7</sup> *L’Oréal SA v OHIM*, Case C-235/05 P

the same or economically linked undertakings. Even for the significant proportion of average consumers who recognise the word IGLO is not the correct spelling of the word IGLOO, but nonetheless identify it as a misspelling, the common conceptual reference is likely to result in them believing there to be a common or linked economic origin. The other elements of the marks are likely to be viewed as consistent with another mark being used by the same undertaking (such as a logo mark, or the mark being used with a house brand). Bearing in mind the similarity between the goods, as well as all of the factors listed above, I find there to be a likelihood of indirect confusion.

## **CONCLUSION**

62. The oppositions are successful and, subject to appeal, the applications are refused.

## **COSTS**

63. In relation to costs, Mr Harris stated:

“77. The Opponent has succeeded on Appeal, so the Hearing Officer’s costs award is set aside. Since the matter has been remitted the question of costs is reserved to be dealt with by the Registrar in all respects, subject to any further appeal.”

64. The opponent was successful on appeal and has been successful in the overall proceedings. Consequently, I find that the opponent is entitled to a contribution towards its costs of the oppositions based upon the scale published in Tribunal Practice Notice 2/2016 and a costs award in respect of the appeal. With regard to the appeal proceedings, I bear in mind that the appeal hearing was a reasonable length and both parties prepared skeleton arguments. In the circumstances, I award the opponent the sum of **£3,000**, to be calculated as follows:

|                                                                       |      |
|-----------------------------------------------------------------------|------|
| Preparing Notices of opposition and considering the Counterstatements | £300 |
|-----------------------------------------------------------------------|------|

|                                                                                                 |                   |
|-------------------------------------------------------------------------------------------------|-------------------|
| Preparing evidence and considering the applicant's submissions filed during the evidence rounds | £850              |
| Preparing written submissions in lieu                                                           | £450              |
| Appeal proceedings                                                                              | £950              |
| Official fee (for oppositions and appeal)                                                       | £450 <sup>8</sup> |
| <b>Total</b>                                                                                    | <b>£3,000</b>     |

65. I therefore order International Foodstuffs Co. LLC to pay Nomad Foods Europe Limited the sum of **£3,000**. This sum is to be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

**Dated this 7<sup>th</sup> day of July 2026**

**S WILSON**

**For the Registrar**

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<sup>8</sup> Whilst the opponent paid the higher official fee of £200, as it was unsuccessful in respect of the 5(3) ground, which is the reason the higher fee was payable, I only make an award in respect of the lower official fee of £100 for each opposition.

## **ANNEX**

### **The First Earlier Mark**

#### **Class 29**

Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs, milk and milk products; edible oils and fats; frozen prepared meals; instant meals and snack products.

#### **Class 30**

Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, ices; honey, treacle; yeast, baking-powder; salt, mustard; vinegar, sauces (condiments); spices; ice; puddings; rice-based snack food; sandwiches; spring rolls.

### **The Second Earlier Mark**

#### **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; frozen prepared meals; instant meals and snack products; chilled foods consisting predominately of fish; chilled meals made from fish; cooked meals consisting principally of fish; fish cakes; frozen fish cakes; fish fillets; frozen fish fillets; fish fingers; frozen fish fingers; fish products; fish products being fresh; fish products being frozen; fish products being preserved; fish with chips; frozen cooked fish; frozen fish; frozen prepared meals consisting principally of fish; pre-cooked dishes incorporating [predominantly] fish; processed fish; scampi; frozen scampi; steaks of fish; frozen steaks of fish; shelled prawns; chicken; chicken pieces; chicken products; cooked chicken; frozen chicken; deep frozen chicken; dehydrated chicken; fried chicken; frozen fried chicken; prepared meals containing [principally] chicken; pieces of chicken for use as a filling in sandwiches; chicken nuggets; frozen prepared meals consisting principally of chicken; chicken kiev; frozen chicken kiev; garden peas; green split-peas; marrowfat peas; peas, preserved; peas, processed; frozen peas; soya beans; preserved soya beans; frozen soya beans; vegetarian frozen foods; frozen prepared meals consisting principally of vegetables; frozen vegetables; frozen vegetables packed in single portions; sweetcorn [cooked]; sweetcorn [preserved];

sweetcorn [frozen]; burgers; frozen burgers; meat burgers; frozen meat burgers; meat products being in the form of burgers; vegetable burgers; frozen vegetable burgers; steaks of meat; frozen steaks of meat; chilled ready meals; frozen ready meals; individual ready meals; ready cooked meals consisting wholly or substantially wholly of fish; frozen ready cooked meals consisting wholly or substantially wholly of fish; ready cooked meals consisting wholly or substantially wholly of game; frozen ready cooked meals consisting wholly or substantially wholly of game; ready cooked meals consisting wholly or substantially wholly of meat; frozen ready cooked meals consisting wholly or substantially wholly of meat; ready cooked meals consisting wholly or substantially wholly of poultry; frozen ready cooked meals consisting wholly or substantially wholly of poultry; ready cooked meals consisting wholly or substantially wholly of vegetables; frozen ready cooked meals consisting wholly or substantially wholly of vegetables; potato snack products in the form of fried pieces; frozen potato snack products in the form of fried pieces; potato snack products in the form of pieces capable of being fried; shepherd's pie; frozen shepherd's pie; dairy desserts; cream desserts; fruit desserts; soya desserts; dairy puddings; desserts made wholly or principally of dairy products; dairy products; cream (whipped-); cream (dairy products); flavoured dairy desserts in the form of mousse layered onto flavoured sauce; flavoured dairy desserts in the form of vanilla flavoured mousse with strawberry flavoured sauce; flavoured dairy desserts in the form of chocolate flavoured mousse with caramel flavoured sauce and dark chocolate curls; desserts made from milk; desserts made from milk and gelatine; desserts made from milk products; desserts made from yoghurt; desserts made wholly or principally of milk products; instant desserts having a milk base; milk based desserts [milk predominating]; milk desserts; yoghurt desserts; fruit puree; egg based foodstuffs; frozen dairy desserts; frozen desserts made wholly or principally of dairy products; milk containing ice cream; artificial milk based desserts; cream preparations containing milk and fruits; dairy products containing milk; desserts in the form of puddings with a milk base; desserts made principally of milk; edible jellies made from milk and vegetable products; food made principally from milk; food preparations consisting wholly or substantially wholly of milk; food preparations containing anhydrous milk fats; food preparations containing soya and milk protein; food preparations having a base of milk; food products consisting principally of skimmed milk solids; foods made from milk products; foods prepared from milk; half-fat milk products; milk based desserts (milk predominating); milk cream; milk jellies;

milk products for food; milk protein; milk protein products; preparations made from milk; preparations with a milk base for use as desserts; prepared desserts (milk based); prepared desserts made from milk products with fruit or herbs or pastry additives; prepared desserts made from milk with fruit additives; prepared desserts made from milk with herbs or pastry additives; prepared desserts made from milk with pastry additives; products based on milk; products made wholly or principally of milk; ready prepared desserts consisting of milk with gelatine as a binding agent; ready prepared desserts consisting of milk with starch as a binding agent; artificial milk based desserts; cream preparations containing milk and fruits; cream products; creams containing dairy products; dairy products being half cream and half milk; double cream; edible cream; imitation cream, milk cream; frozen ready meals; frozen dairy desserts; frozen desserts made wholly or principally of dairy products.

### Class 30

Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; Flour and preparations made from cereals, bread, pastry and confectionery, ices; Honey, treacle; Yeast, baking-powder; Salt, mustard; Vinegar, sauces (condiments); Spices; Ice; sauces for frozen fish; sauces for chicken; frozen pastry stuffed with meat and vegetables; frozen pastry stuffed with vegetables; frozen prepared rice with seasonings and vegetables; bread rolls containing burgers; chilled ready meals; individual ready meals; ready cooked meals; pies containing fish; frozen pies containing fish; pies containing game; frozen pies containing game; pies containing meat; frozen pies containing meat; pies containing poultry; frozen pies containing poultry; pies containing vegetables; frozen pies containing vegetables; waffles; frozen waffles; deep frozen pasta; ready cooked meals consisting wholly or substantially wholly of pasta; frozen ready cooked meals consisting wholly or substantially wholly of pasta; dessert preparations in the nature of mousse, all being preserved by a quick-freezing process; frozen desserts; frozen fruit desserts; frozen mousse desserts; frozen mousse; frozen mousse confections; mousse (sweet); mousse confections; vanilla flavoured mousse; vanilla flavoured mousse with strawberry flavoured sauce; chocolate flavoured mousse; chocolate flavoured mousse with caramel flavoured sauce and dark chocolate curls; dessert puddings; puddings [desserts]; puddings for use as desserts; preparations for making desserts; prepared desserts [chocolate based]; prepared desserts [confectionery]; caramel; caramel sauce; strawberry sauce; chocolate sauce; sauces for ice cream;

chocolate; chocolate based produces; chocolate chips; chocolate curls; chocolate flavoured confectionery; foods with a chocolate base; ice cream; ice cream desserts; ready-to-eat puddings; desserts having a reduced calorie content; desserts; ice desserts; non-dairy frozen dessert products; prepared desserts (chocolate based); prepared deserts (confectionery); confectionery; confectionery (non-medicated); confectionery bars; confectionery containing jam; confectionery containing jelly; confectionery in frozen form; confectionery items (non-medicated); confectionery items coated with chocolate; confectionery products (non-medicated); dairy confectionery; frozen confectionery; frozen confectionery containing ice cream; frozen confections; ice confectionery; ice confections; ice cream confectionery; ice cream confections; non-medicated confectionery; non-medicated confectionery containing milk; non-medicated confectionery for use as part of a calorie controlled diet; non-medicated confectionery products; preparations for making confectionery products; prepared desserts (confectionery); frozen dairy confections; strawberry flavoured sauce; caramel flavoured sauce; foodstuffs flavoured with caramel [caramel predominating]; frozen confections in the form of cylindrical rolls consisting of ice cream covered with sponge cake; frozen confections in the form of cylindrical rolls consisting of ice cream covered with jam and sponge cake; dairy ice cream; frozen confectionery containing ice cream; frozen confectionery containing ice cream and jam; fruit ice cream; ice cream bars; ice cream cones; ice cream confectionery; ice cream confections; ice cream gateaux; ice cream products; ice cream sandwiches; ice cream with fruit; ice cream with pastry; ice creams; ice creams containing chocolate; ice creams flavoured with chocolate; imitation ice cream; non-dairy ice cream; soya based ice cream products; substances for binding ice cream; cakes; frozen cakes; sponge cakes; sponge puddings; puddings (desserts); sponge puddings; prepared desserts (pastries); puddings (desserts); bakery confectionery being chilled; bakery confectionery being frozen; confectionery (non-medicated); confectionery bars; frozen confectionery; frozen confectionery containing ice cream; frozen confections; ice confectionery; ice confectionery in the form of lollipops; ice confections; ice cream confectionery; ice cream confections; ingredients for confectionery; mixtures for making frozen confections; mixtures for making ice cream confections; non-medicated confectionery; non-medicated confectionery containing milk; non-medicated confectionery for use as part of a calorie controlled diet; non-medicated confectionery in jelly form; non-medicated confectionery products; preparations for making

confectionery products; preparations for making ice cream confectionery; prepared desserts (confectionery); frozen confectionery containing jam; desserts; chilled desserts; desserts having a reduced calorie content; dessert puddings; flavoured desserts; vanilla flavoured desserts; strawberry flavoured desserts; chocolate flavoured desserts; caramel flavoured desserts.