

O/0634/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00004102243

BY COMMONS AT LTD

TO REGISTER THE FOLLOWING TRADE MARK:

COMMONS

IN CLASSES 30, 35 AND 43

AND

IN THE MATTER OF OPPOSITION THERETO UNDER NO. 451873

BY VIRGIN HOTELS, LLC

Background and Pleadings

1. On 20 September 2024, Commons At Ltd ('the Applicant') filed an application to register the following trade mark ('the Contested Mark'):

COMMONS

2. The application was published for opposition purposes in the Trade Marks Journal on 11 October 2024. Registration is sought in respect of the following goods and services:

Class 30:

Ground and whole bean coffee; cocoa; tea (herbal and non-herbal); coffee, tea, cocoa and espresso beverages; beverages made with tea; beverages made with powdered chocolate; baked goods; viennoiserie; chocolate; brownies.

Class 35:

Retail services relating to the sale of coffee, tea, cocoa wholesale services relating to the sale of coffee, tea, cocoa; mail order retail services and electronic shopping retail services connected with the sale of coffee, tea, cocoa.

Class 43:

Restaurants; restaurant services; cafes; café services; coffee shops; coffee shop services; catering; catering services; mobile catering; mobile catering services; pop-up restaurants, cafes and coffee shops; coffee bars; mobile coffee bars; pop-up coffee bars; outside catering.

3. On 13 January 2025, the application was opposed by Virgin Hotels, LLC ('the Opponent'), based on section 5(2)(b) of the Trade Marks Act 1994 ('the Act'). The opposition was filed with notice by way of a Form TM7A on 11 December 2024. The application is opposed in its entirety. The Opponent relies upon the following earlier registration, in full:

UK00801256468¹

THE COMMONS CLUB

Disclaimer: CLUB.

Filing date: 16 June 2015

Date of entry in register: 18 May 2016

Priority details:

Priority date: 17 December 2014

Priority Country: United States of America

TM from which priority claimed: 86482875

Claim: whole

Registered for the following services in class 43: *Bar and restaurant services*

4. The Opponent has indicated in its notice of opposition and statement of grounds that its pleading is based on section 5(2)(b) of the Act, i.e. that the applied-for mark is similar to the Opponent's earlier mark and for identical/similar goods and services. It has elected not to provide an accompanying narrative (which it is entitled to do).
5. The Applicant has denied that there is a likelihood of confusion between the marks. Specifically, it has pleaded the following:²
 - that it is not admitted that the parties' marks are highly similar, but it is accepted that there is a low degree of similarity between them;

¹ This right is a comparable trade mark (IR) pursuant to Article 56 of the 'Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (2019/C 384 I/01)', also known as the 'Withdrawal Agreement'. This comparable mark is based on International Registration ('IR') W01256468, which, in turn, claims priority from US registration 86482875.

² Applicant's Counterstatement, [5] to [8].

- it is denied that the Applicant's goods/services in classes 30 and 35 are identical/similar to the Opponent's services;
and
 - it is accepted that some of the Applicant's class 43 services are similar to those of the Opponent, albeit it is denied that such similarity gives rise to a likelihood of confusion.
6. Given that the Applicant has not identified which of the contested services it concedes are similar to those of the Opponent, all of the contested terms remain in issue.
7. The Opponent is represented by Osborne Clarke LLP. The Applicant is represented by Withers & Rogers LLP.³
8. Both parties filed evidence. A hearing was neither requested, nor considered necessary; and only the Opponent filed written submissions in lieu thereof. The following decision has been made after careful consideration of the case papers available to me.

RELEVANCE OF EU LAW

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

EVIDENCE

³ At the time of filing its Defence and Counterstatement, the Applicant was represented by Open Plan Law. From 27 June 2025 to date, the Applicant has been represented by Withers & Rogers LLP.

10. The Opponent's evidence comes from Joseph Alexander Francké, an Associate (Chartered Trade Mark Attorney) of the Opponent's representative. Mr Francké's Witness Statement is dated 2 June 2025 and is accompanied by six exhibits: JAF1 – JAF6. The Opponent's evidence has been adduced to support its argument on the similarity of the parties' goods/services.⁴
11. The Applicant's evidence comes from Mitchell Kite, the finance and systems manager of the Applicant company. Mr Kite's Witness Statement is dated 10 September 2025 and is accompanied by thirteen exhibits: MK01 – MK13. The Applicant's evidence is focused on the matter of honest concurrent use, although this has not been pleaded in instant case. I will address this point at [13] – [16].
12. I confirm that I have read all of the evidence and I will refer to it to the extent that it is relevant.

DECISION

Preliminary issue

A note on the matter of honest concurrent use

13. The Applicant has not pleaded a defence of honest concurrent use in its Form TM8.⁵ It is not mentioned until the closing paragraphs of Mr Kite's Witness Statement, where it becomes apparent that the evidence introduced is intended to demonstrate that the Applicant has 'actively used the mark COMMONS honestly and concurrently since at least as early as 2022.'⁶ Because the Applicant has not raised honest concurrent use in its defence and counterstatement, this cannot be taken into consideration for the purposes of this decision.
14. In any event, my view is that the evidence provided does not support a finding of honest concurrent use, for reasons that I will now briefly explain. In essence, honest concurrent use is found where the competing marks have been used

⁴ Witness Statement of J. A. Francké, [1.4]; Opponent's written submissions in lieu of a hearing, [22].

⁵ Notice of defence and counterstatement.

⁶ Witness Statement of M. Kite, [32].

honestly and concurrently and, by virtue of such use, there is no adverse effect on the capacity of the earlier mark to function as a trade mark.^{7,8}

15. The first use of the Applicant's mark, on its own evidence, commenced on 28 December 2022.⁹ Mr Kite has given narrative evidence that the Opponent's 'Common Club' restaurant in Shoreditch 'was only opened in 2024'.¹⁰ In support of this statement, Mr Kite has introduced a press release, dated 1 August 2024, from the Opponent itself, according to which 'The [Virgin] hotel's lobby and café will become a pop-up Commons Club (Virgin Hotels' flagship food and beverage concept), before its transformation into an exciting new space later in the year'.¹¹ The Opponent appears to have accepted this chronology.¹²

16. Based on the above evidence, the period of co-existence commenced no sooner than August 2024. By the time the Applicant filed its application for the Contested Mark (20 September 2024), any concurrent use would have had a duration of mere weeks. It is my view that it is almost impossible to make a finding (either way) on the matter of honest concurrent use based on such a short period of co-existence.

Earlier mark

17. In accordance with section 6 of the Act, the Opponent's mark is an earlier mark by virtue of its priority date, which precedes the filing date of the application.

The proof of use provisions

18. Section 6A of the Act provides that, in opposition proceedings, where the date on which the registration procedure of the earlier mark was completed more than 5 years prior to the filing date (or priority date) of the Contested Mark, the Opponent may be required to prove use of the earlier mark. In the instant case, section 6A is engaged because the earlier mark had been registered for more than 5 years at

⁷ *Match Group LLC v Muzmatch Ltd* [2023] EWCA Civ 454, at [116].

⁸ Kerly's Law of Trade Marks and Trade Names, 17th Ed., at [17.087].

⁹ Witness Statement of M. Kite, [10].

¹⁰ As above, [27].

¹¹ Witness Statement of M. Kite, [27]; Exhibit MK12.

¹² Opponent's written submissions in lieu of a hearing, [52].

the at the date on which the application was filed. The Applicant has elected not to request that the Opponent substantiate the use of its earlier mark. Accordingly, the Opponent may rely upon the full width of its registered specification.

Section 5(2)(b) opposition

Relevant legislation

19. 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.’

I also note Section 5A:

‘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.’

Relevant case law

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

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

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

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

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

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

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

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

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

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

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

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

Comparison of goods

21. For ease of reference, I set out the goods and services to be compared in the following table:

Opponent's mark:	Contested Mark:
<u>class 43</u> : Bar and restaurant services	<u>Class 30</u> : Ground and whole bean coffee; cocoa; tea (herbal and non-herbal); coffee, tea, cocoa and espresso beverages; beverages made with tea; beverages made with powdered chocolate; baked goods; viennoiserie; chocolate; brownies. <u>Class 35</u> : Retail services relating to the sale of coffee, tea, cocoa wholesale services relating to the sale of coffee, tea, cocoa; mail order retail services and electronic shopping retail services connected with the sale of coffee, tea, cocoa. <u>Class 43</u> : Restaurants; restaurant services; cafes; café services; coffee shops; coffee shop services; catering; catering services; mobile catering; mobile catering services; pop-up restaurants, cafes and coffee shops; coffee bars; mobile coffee bars; pop-up coffee bars; outside catering.

22. Section 60A of the Act provides:

‘(1) For the purpose of this Act goods and services-

(a) are not to be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification.

(b) are not to be regarded as being dissimilar from each other on the ground that they appear in different classes under the Nice Classification.

(2) In subsection (1), the ‘Nice Classification’ means the system of classification under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, which was last amended on 28 September 1975.’

23. I note the case of *Gérard Meric v Office for Harmonisation in the Internal Market*,¹³ in which the General Court (‘GC’) held that:

‘29. ... 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’

24. The Court of Justice of the European Union (‘CJEU’) in *Canon*, Case C-39/97, stipulates that all relevant factors relating to the parties’ goods and services must be taken into account:

‘[23] 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’.

¹³ Case T-133/05.

25. Goods or services will be found to be in a competitive relationship only where one is substitutable for the other.¹⁴ In *Boston Scientific Ltd v OHIM*, Case T-325/06, the GC described 'complementary' in the following terms: '[...] 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'.¹⁵ In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods.

26. Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281,¹⁶ identified the following factors for assessing similarity of the respective goods and services:

- (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.

¹⁴ *Lidl Stiftung & Co KG v EUIPO*, Case T-549/14.

¹⁵ Paragraph 82.

¹⁶ *British Sugar Plc v James Robertson & Sons Ltd* [1996] R. P. C. 281, pp 296-297.

27. Goods (or services) may be grouped together for the purposes of assessment, as Geoffrey Hobbs Q. C. (as he then was), sitting as the Appointed Person, said in *Separode Trade Mark* BL O-399-10:

‘The determination must be made with reference to each of the different species of goods listed in the opposed application for registration; if and to the extent that the list includes goods which are sufficiently comparable to be assessable for registration in essentially the same way for essentially the same reasons, the decision taker may address them collectively in his or her decision.’

28. Case law establishes that ‘... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise’ but ‘Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question.’

The Opponent’s evidence

29. The materials provided to support the Opponent’s claim of similarity between the parties’ goods were obtained by way of ‘online desktop research’ between 28 and 30 May 2025.¹⁷ In short, this evidence identifies several examples of the same undertaking providing both: restaurant services and/or takeaway coffee/coffee products and baked goods; or, restaurant services as well as retail channels through which its own branded goods are sold. I do not consider it necessary to address this evidence in detail. It will suffice to note a few examples. The website extracts show that the well-known restaurant chains Wagamama, Nando’s, Five Guys and Ottolenghi sell, variously, own-branded products such as seasonings/sauces, meal-kits, items of apparel (e.g. T-shirts), food and drink-themed giftsets and hampers.¹⁸ Extracts from the UK websites of restaurant chains, inter alia, Pret A Manger, Leon and Dishoom show, variously, that

¹⁷ Witness Statement of J. A. Francké, [1.4] – [1.5].

¹⁸ Exhibit JAF1; Witness Statement of J. A. Francké, [2.1].

takeaway tea/coffee-based beverages and baked goods are available for takeaway from their stores, under their own branding.¹⁹ Extracts from the websites of Fortnum & Mason, Selfridges, Harvey Nichols, Harrods and Marks and Spencer show that these undertakings (which are well-known UK department stores) retail, inter alia, own-branded coffee-related goods, and have in-store restaurants.²⁰

30. I am satisfied that some restaurants also provide takeaway options for their food and drink, and that some retail food/drink product lines under their own branding. I also consider it a notorious fact that many large department stores have in-store restaurants; although the fact that they do so, in my view, is not particularly helpful to the instant case. I say this because, in my experience, ‘department store’ restaurants do not typically sell the retail goods (located in other departments of the store) from the restaurant itself. Department stores, by their nature, sell a multitude of different goods; and I do not consider the presence of an in-store restaurant to be particularly significant in this context.

Class 30

Contested terms: *coffee, tea, cocoa and espresso beverages; beverages made with tea; beverages made with powdered chocolate*

31. The above goods are all qualified as being beverages, i.e. prepared liquids that are ‘ready to drink’. The Opponent has submitted that the Applicant’s class 30 goods are similar to the Opponent’s *Bar and restaurant services* to at least a low to medium degree.²¹ It is submitted that the parties’ offerings: have the same purpose; are in a complementary relationship; are in competition to a certain extent; and have overlapping users and trade channels.²² The Opponent has referred to an earlier decision of this tribunal, BLO/0468/25, in which an analogous finding was made.²³ I remind myself that I am not bound by this earlier decision. I generally agree with the Opponent’s observations, albeit the purposes of the respective

¹⁹ Exhibit JAF2.

²⁰ Exhibit JAF3.

²¹ Opponent’s written submissions in lieu of a hearing, [24].

²² As above, [24] – [25].

²³ Decision BLO/0468/25, at [46].

offerings will differ somewhat. Whilst both have the ultimate purpose of providing refreshment to consumers, their specific purposes will be different. A coffee beverage, as a good, has the purpose of refreshing the consumer; whereas the purpose of being served a coffee in a bar/restaurant is, typically, to have the coffee brought to you while seated in the bar/restaurant. The Opponent's act of service confers several benefits on to the consumer that go beyond mere refreshment or quenching of thirst. The goods and services will, therefore, have different methods of use. I agree that the goods and services are complementary; the beverages, as goods, are evidently indispensable to the serving of those beverages in a bar/restaurant, and the average consumer may presume the beverages themselves to originate from the same undertaking. There may also be a measure of competition between the goods/services in that some consumers may deliberate over whether to purchase a beverage as a mere good or order a beverage to be served to them for consumption on the bar/restaurant premises. All things considered, I find a medium degree of similarity between the parties' offerings.

Contested terms: *baked goods; viennoiserie; brownies*

32. Whilst the comparison above at [31] involves beverages, I consider the same overlaps to apply, by analogy, here. I find the parties' offerings to be similar to a medium degree.

Contested terms: *Ground and whole bean coffee; cocoa; tea (herbal and non-herbal)*

33. My view is that the above goods are 'dry' goods as opposed to ready-to-drink beverages by way of liquids prepared with the 'dry' coffee, cocoa or tea. I note that Class 30 of the Nice Classification System ('the Nice System') includes the following in its explanatory note:²⁴

'This class includes, in particular:

- beverages with coffee, cocoa, chocolate or tea base;

²⁴ WIPO Nice Classification System, Edition 13-2026, Class 30.

[...]

34. The Nice System provides a list of examples of class 30 goods, which includes 'cocoa', 'coffee' and 'tea' (i.e. unqualified); as well as 'cocoa-based beverages', 'coffee-based beverages' and 'tea-based beverages'. The terms coffee, tea and cocoa, interpreted literally, refer to the un-prepared foodstuffs, in dry form, before they have been 'made up' into beverages.
35. The parties' respective offerings will differ in their specific purposes. The purpose of the Opponent's *Bar and restaurant services* has already been noted (at [31]). The purpose of the Applicant's goods is to provide refreshment or quench thirst. Methods of use will evidently differ. Users will overlap. I accept that some bars (which will include coffee bars) and restaurants sell their own branded coffee/tea/cocoa as dry goods for customers to purchase as well as serving ready-to-drink beverages for consumption on the premises (or to take away). This is borne out by the Opponent's evidence. Trade channels will, therefore, overlap. There will also be complementarity between the goods and services; the contested goods will be necessary for the bar/restaurant to prepare its beverages served, and some average consumers may presume the dry goods used to make the beverages to be the service-provider's own branded goods. There may also be some competition between the goods/services in that some consumers may deliberate over whether to purchase, say, a packet of coffee beans or to order a coffee-based beverage to be served to them in a bar or restaurant. I find the level of similarity between the parties' offerings to be within the medium range.

Contested term: *chocolate*

36. I consider the term 'chocolate' to encompass chocolate in various forms, including, inter alia: in solid form (e.g. bars), as 'sprinkles' or shavings, or in powdered form. It is my understanding, as an ordinary member of the general public, that establishments serving hot chocolate beverages often use powdered chocolate as the base. I do not consider it typical for bars/restaurants serving hot chocolate beverages to also sell own-branded powdered chocolate as a product, although some establishments might sell it. I recognise that some coffee bars also sell bars

of chocolate. The parties' offerings will have different specific purposes and methods of use. Users will overlap to the unremarkable extent that many people consume chocolate and visit bars/restaurants. Trade channels may overlap somewhat, e.g. where coffee bars sell bars of chocolate under their own branding. Whilst it is at least conceivable that a consumer might deliberate over whether to purchase a chocolate bar, or chocolate powder, over whether to be served a hot chocolate in a coffee bar, commercially speaking, I do not consider the parties' offerings to be in a competitive relationship. However, in cases where a coffee bar might sell its own branded chocolate powder (akin to selling its own branded coffee beans), then there will be complementarity. That said, it strikes me as less commonplace for coffee shops to sell chocolate powder than, say, coffee beans. In the light of the foregoing, I find the parties' goods/services to have a low level of similarity. I have noted the previous decision of this tribunal to which the Opponent has referred.²⁵ Although my reasoning does not fully align with the Hearing Officer in that case, I have nevertheless found some level of similarity between the competing goods and services in the instant case.

Class 35

Contested terms: *Retail services relating to the sale of coffee, tea, cocoa [...] mail order retail services and electronic shopping retail services connected with the sale of coffee, tea, cocoa.*

37. The retail of goods entails 'the bringing together, for the benefit of others, of a variety of goods, [...] enabling customers to conveniently purchase those goods [...]'.²⁶ The Opponent has submitted that retail services relating to the sale of food/drink have the same purpose as bar/restaurant services, i.e. the nourishment of customers.²⁷ It argues that the parties' services are in competition; and that the Opponent's evidence shows that restaurants frequently provide retail services,

²⁵ Decision BLO/0468/25.

²⁶ WIPO Nice Classification System, Edition 13-2026, Class 35, Explanatory Note.

²⁷ Opponent's written submissions in lieu of a hearing, [21].

whether from the restaurant or online.²⁸ As noted, I accept that some restaurants also sell own-branded 'dry' goods for beverages (e.g. coffee beans, tea) from their premises or online. However, mere sales do not necessarily constitute instances of *retail* services. I remind myself that the *retail* of goods is more than the *mere selling* of them. The selling must involve 'real and significant performance of [...] selecting an assortment of goods for sale and offering a variety of retail services aimed at inducing customers to purchase [...]'.²⁹ To my mind, bars/restaurants selling their own branded goods are not typically offering a retail service in the sense outlined by Mr Hobbs. Consequently, I consider trade channels to be distinct. I agree that there will be some competition in that a consumer might deliberate over whether to have a ready-to-drink coffee, tea or cocoa served to them to be enjoyed while seated in the bar/restaurant or, instead, to purchase a packet of coffee beans from a store to take home. I also bear in mind that the competing services have distinct specific purposes: the serving of coffee, tea or cocoa beverages to be consumed on-site, versus the making available of a variety of coffee, tea and cocoa 'dry' goods for purchase to take home. The methods of use are therefore different. Whilst the *goods* to which the retail services relate are in a complementary relationship with the Opponent's bar/restaurant services, there is no complementarity between the *retail of coffee/tea/cocoa* and the Opponent's services. All things considered, I find a fairly low level of similarity between the parties' services.

Contested term: *wholesale services relating to the sale of coffee, tea, cocoa*

38. Like retail services, wholesale services also entail the making available for purchase an array of goods. However, goods for purchase on a wholesale basis are typically aimed at professional customers; most often retailers who will sell the goods via their outlets, or other businesses who will use the goods for their service/product. In the instant case, the average consumer of the Applicant's wholesale services will include any establishments in the business of making/serving beverages. The average consumer of the Opponent's bar and

²⁸ As above, [23].

²⁹ *Tony Van Gulck v Wasabi Frog Ltd*, Case BL O/391/14, [9].

restaurant services, on the other hand, is the general public. Users and trade channels will, therefore, be separate. I recognise that some general consumers may purchase goods on a wholesale basis, but these will unlikely be significant in number. Following my finding that trade channels will be distinct, there is no complementarity. I do not find a competitive relationship between the services, either; neither service being substitutable for the other. Methods of use will be different by virtue of the differing acts of service performed. In the light of the foregoing, I do not find any similarity between the services. Whilst both parties' services relate in some way to coffee, tea and cocoa, this factor alone is, in my view, insufficient to support a finding of similarity. In case I am wrong about this, then any level of similarity will be very low.

Class 43

Contested terms: *Restaurants; restaurant services; pop-up restaurants [...]; coffee bars; mobile coffee bars; pop-up coffee bars*

39. The Opponent has submitted that the above services are encompassed by the Opponent's broader term *Bar and restaurant services*.³⁰ I agree. I find the parties' services to be identical based on the principle in *Meric*.

Contested terms: *cafes; café services; coffee shops; coffee shop services; pop-up [...]; cafes and coffee shops*

40. The Opponent has submitted that the above services are highly similar to the Opponent's *Bar and restaurant services* because both parties' offerings are establishments in which foods and drink are served to customers.³¹ It submits that the respective services, therefore, overlap in purpose, intended use and users.³² It is argued that the competing services are in a competitive relationship, in that the relevant public may deliberate over whether to visit a café/coffee shop over a

³⁰ Opponent's written submissions in lieu of a hearing, [16] – [18].

³¹ As above, [19].

³² Opponent's written submissions in lieu of a hearing, [19].

restaurant, and vice versa, for food and/or drink.³³ I agree with the Opponent's analysis and find the parties' services to be highly similar.

Contested terms: *catering; catering services*

41. It is my understanding that catering is the provision of food and drink for an event; e.g. a wedding, private party, or corporate event such as a conference. The act of service typically encompasses the preparation and service of the food and drink and clearing up after the event. Catering services can be provided in-house by the venue itself (e.g. a hotel), or a third-party caterer can be engaged to attend a venue of the consumer's choice. I compare the contested services to the Opponent's restaurant services. The Opponent has submitted that the parties' services will be highly similar due to overlaps in purpose, intended use, user, and trade channel; and a degree of competition between them.³⁴ I agree with this submission for the following reasons. Their purposes will clearly overlap to the extent that both services entail the provision and serving of food and drink. Some restaurants, particularly those in hotels, provide catering for large events. Trade channels will, therefore, overlap. Catering services will be engaged by both professional and general consumers. Users will inevitably overlap given that a large proportion of general consumers visits bars or restaurants. There will be some competition between the respective services; for example, one might deliberate over whether to make a booking for a large group to dine at a restaurant or whether to book catering services from a third party. I do not find a complementary relationship given that neither service is necessary or important for the other. In the light of the foregoing, I find the parties' services to be highly similar.

Contested terms: *mobile catering; mobile catering services; outside catering.*

42. The above catering services can be hired to be provided at the consumer's desired location. For reasons analogous to those set out above at [41], I find the respective services to be highly similar.

³³ As above.

³⁴ Opponent's written submissions in lieu of a hearing, [20].

Average consumer and the purchasing act

43. The average consumer is deemed to be reasonably well-informed and reasonably observant and circumspect. The word 'average' denotes that the person is typical. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97.
44. With the exception of the contested *wholesale* services (addressed below, at [45]), the average consumer of the goods and services will be member of the general public. The purchasing act will, in most cases, be primarily visual. The bar and restaurant services will be engaged by entering the establishment and ordering food and drinks to be consumed on the premises. Catering services will likely be encountered in advertising, either online or in printed matter. The relevant goods will likely be chosen from a menu (in the case of beverages) or self-selected from the products on display (in the case of coffee beans etc). Where goods are purchased online, they will be selected after considering product listings. There will be an aural aspect to the purchasing process; where, for example, requests are made to staff, or caterers are engaged after hearing word-of-mouth recommendations. The price-points will range from about £3 or £4 for a coffee served in a bar/restaurant to several hundreds of pounds or more for catering services. The level of attention paid will vary depending on the particular goods or service purchased. Ordering a coffee or tea in a bar or restaurant typically involves a fairly low level of attention. As to the bar/restaurant services and the goods, factors influencing the purchasing process may include, inter alia: the choice on the menu; the décor or ambience of the establishment; the selection of goods on offer. At the other end of the scale, a high level of attention will likely be paid when engaging a catering service to, for example, provide food and drink for a wedding reception. In this case, the consumer will likely consider, inter alia: the choice of food and drink on offer; whether the hire of items such as glassware and table-linen etc can be provided as part of the service.

45. Although my primary finding is that the contested wholesale services are not similar to any of the Opponent's offerings, my back-up finding of 'very low similarity' means that, strictly speaking, the aforesaid services remain in scope. The Applicant's wholesale services will be engaged predominantly by professional purchasers, particularly those in the hospitality and retail trades. The purchasing act will be predominantly visual; with the services encountered in advertisements, either online or in printed matter. Some consumers may first encounter the service-provider by way of word-of-mouth recommendation. To my mind, a professional purchaser will likely pay a reasonably high level of attention when making a purchase. Whilst the unit price of wholesale goods is necessarily far lower than that of retailed goods, wholesale purchases typically involve bulk orders and may, therefore, depending on the scale of the consumer's business, involve significant cash outlay. Factors influencing the purchasing process will likely include, inter alia: the quality of the goods available; whether the wholesaler can supply the goods in sufficient bulk to meet the consumer's needs.

Comparison of the marks

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

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

47. The marks to be compared are:

Opponent's mark:	Contested Mark:
THE COMMONS CLUB	COMMONS

48. Both are word marks. In this connection, I remind myself of the case of *LA Superquimica v EUIPO*,³⁵ at paragraph [39] in which it was held that:

‘[...] it should be noted that a word mark is a mark consisting entirely of letters, words or groups of words, without any specific figurative element. The protection which results from registration of a word mark thus relates to the word mentioned in the application for registration and not the specific figurative or stylistic aspects which that mark might have. As a result, the font in which the word sign might be presented must not be taken into account. It follows that a word mark may be used in any form, in any colour or font type (see judgment of 28 June 2017, *Josel v EUIPO — Nationale-Nederlanden Nederland (NN)*, T-333/15, not published, EU:T:2017:444, paragraphs 37 and 38 and the case-law cited).’

Overall impression of the marks

49. The Opponent's mark comprises the three words ‘The’, ‘Commons’ and ‘Club’. To my mind, the mark will be perceived in its entirety, albeit the word ‘Commons’ will play the greater visual role. The elements ‘The’ and ‘Club’ will be seen as less distinctive, for reasons that I will now explain. Here, the word ‘the’ functions as the definite article, in that it denotes *the* ‘Commons Club’ (as opposed to just a ‘Commons Club’). The word ‘Club’ will be seen as merely descriptive, i.e. denoting the type of establishment to which the word ‘Commons’ has been ascribed.

³⁵ Case T-24/17.

50. The Applicant's mark comprises the single word 'Commons'. It does not lend itself to deconstruction into separate elements; its overall impression resides in the single word 'Commons'.

Visual comparison

51. The Opponent has argued that the marks differ in 'negligible elements that are likely to be overlooked' and that they are, therefore, visually similar to a high degree.³⁶

52. The Applicant has addressed the comparison of the marks in its counterstatement as follows:

'5. It is not admitted that the Application is highly similar to the Opponent's earlier trade mark. It is admitted that the Application is similar to a low degree due to the presence of the allusive and lowly distinctive word COMMONS.'
[my underlining added].

53. The matter of the distinctiveness of 'Commons' will be addressed more fully later. For now, I will confine my remarks to the visual comparison of the marks. Both marks feature the word 'Commons'; for the Applicant, this element forms the entirety of its mark. The only points of visual difference are the presence of the words 'The' and 'Club' in the Opponent's mark, which flank the word 'Commons'. I have already found that the Opponent's mark will be perceived in its entirety. I respectfully disagree with the Opponent's submission that the elements 'The' and 'commons' within the Opponent's mark are negligible. Whilst I have found 'Commons' to be the more distinctive element within the mark, this does not mean that the words 'The' and 'Club' will be overlooked. All things considered, I find the marks to have a level of visual similarity in the low to medium range.

Aural comparison

³⁶ Opponent's written submissions in lieu of a hearing, [40].

54. The Opponent's submission can be summarised as follows:

- i. that the relevant public may omit verbal elements that are either 'less prominent than ones that stand out visually' or are otherwise 'descriptive/secondary' in the overall impression given by the mark;³⁷
 - ii. that consumers often abbreviate the full names of eating establishments for ease of reference, e.g. 'let's meet at Commons', instead of 'let's meet at The Commons Club';³⁸
 - iii. that the relevant public in the instant case are unlikely to articulate the Opponent's mark in full; and would likely refer to it as 'Commons' or 'Commons Club';³⁹
- and
- iv. that even where the mark is articulated in full, the additional syllables flanking 'Commons' do not prevent the marks being highly aurally similar.⁴⁰

55. By way of an initial observation, my view is that the Opponent's argument on aural similarity is at odds with its argument on visual similarity, i.e. that the marks are highly visually similar because the elements 'The' and 'Club' are negligible. The Opponent has referred in its submissions to the case of *Pensa Pharma*,⁴¹ in support of its argument as to the tendency of consumers to contract certain trademarks owing to the unarticulated elements being descriptive or playing a lesser role within the mark as a whole. However, the following passage from the *Pensa Pharma* case makes it clear that the failure to articulate the mark in full in the circumstances described by the Opponent relies on the consumer perceiving the mark in full, but choosing not to articulate the elements that it perceives as superfluous:

'[107]: [...] the relevant public generally pays greater attention to the beginning of a sign than to the end. In those circumstances, that public will focus its attention on the element 'pensa' in the contested mark and not on the element

³⁷ Opponent's written submissions in lieu of a hearing, [41].

³⁸ As above.

³⁹ Opponent's written submissions in lieu of a hearing, [41] and [43].

⁴⁰ Opponent's written submissions in lieu of a hearing, [44].

⁴¹ T-544/12 *Pensa Pharma v OHIM*, EU:T:2015:355.

‘pharma’ in that mark. It may be presumed that that public, which generally tends to contract long marks consisting of two words into a single word, will not pronounce the word ‘pharma’, inasmuch as that word is superfluous because of the nature of the goods and services covered by the contested mark, namely pharmaceutical goods and services.’

56. My view is that the Opponent cannot cogently argue that, visually speaking, ‘The’ and ‘Club’ are negligible/overlooked whilst, aurally speaking, the consumer will fail to articulate these elements for the reason set out in *Pensa Pharma*. The consumer must first perceive the mark in full in order to perform the mental exercise of deeming certain parts of the mark superfluous, leading to the decision to abbreviate the mark when articulating it.

57. Notwithstanding my comments on the inconsistency of the Opponent’s arguments, I accept that there may be some average consumers who might not articulate the mark ‘The Commons Club’ in full, in line with the rationale in the *Pensa Pharma* case. I consider each of the following contracted articulations to be possible: ‘The Commons’, ‘Commons Club’ or ‘Commons’. However, of the three possible articulations, I consider ‘Commons Club’ to be a more obvious contraction of the mark than the other two. It is my view that the number of average consumers who might choose not to pronounce the elements ‘The’ and ‘Club’ would be very small. If the Opponent’s mark is articulated as either ‘The Commons’ or ‘Commons Club’, the marks would have a high level of aural similarity.

58. Where the Opponent’s mark is articulated in full, I consider the marks to have a medium level of aural similarity.

Conceptual comparison

59. The Opponent has submitted the following:⁴²

⁴² Opponent’s written submissions in lieu of a hearing, [45].

'Conceptually, because of the coinciding distinctive word "COMMONS" in the respective marks, both will convey the same idea to the relevant public. The word 'commons' may refer to several different concepts, such as the UK's parliament or the common people i.e. people not of nobility. Accordingly, the marks are at least highly similar conceptually, and for the relevant public who focus on the distinctive element "COMMONS", they are conceptually identical'.

60. The Oxford English Dictionary includes the following meanings of the word 'commons':⁴³

- To denote 'common people', i.e. as opposed to aristocrats or upper classes;
- To denote the 'House of Commons, or lower house of the Parliament of the United Kingdom [...]; the members of this.'

61. I agree that the word 'commons' will likely be understood in either of the ways that the Opponent suggests. However, I disagree with the Opponent's argument that the parties' marks are conceptually identical. I have found that, visually speaking, the elements 'The' and 'Club' within the Opponent's mark will not be overlooked. Furthermore, I have found that instances where the average consumer articulates a contracted version of the mark would occur precisely because the consumer *has perceived* the elements 'The' and/or 'Club' to be less distinctive than 'Commons'. The consumer has been moved to abbreviate the mark *by reason of their understanding* of 'The' and/or 'Club' to be superfluous when referring to the mark. It therefore follows that 'the' and 'Club' must contribute something to the conceptual message conveyed by the mark 'The Common Club', beyond that conveyed by the mark 'Commons'.

62. I find that the Opponent's mark 'The Commons Club' will be understood by the average consumer as denoting a club or venue, with the 'commons' element conjuring the idea of either the House of Commons (or, perhaps, Parliament in general) or 'common', i.e. ordinary, people. The word 'Commons' will be seen as

⁴³ Oxford English Dictionary (online version), accessed 10 June 2026 at 14:59 GMT.

qualifying the word 'Club' in that the immediate impression would be of a club by the name of 'Commons'. As to the Applicant's mark, the word 'Commons' solus does not convey any notion of clubs or venues; it will merely conjure the idea of 'common' people or the House of Commons. There is clearly a significant conceptual overlap between the marks by virtue of the shared 'Commons' element. The *meaning* of 'Commons', to my mind, will not change in the presence of the words 'The' and 'Club' either side. All things considered, I find the marks to be conceptually similar to at least a medium degree.

Distinctive character of the earlier mark

63. 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-0000, paragraph 49).

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

64. Registered trade marks possess varying degrees of inherent distinctive character. Where a mark is suggestive or allusive of a characteristic of the goods or services, it tends to be lower. Inherent distinctive character may range up to a high level for marks which consist of invented words with no allusive qualities.
65. The Opponent has not claimed that its mark enjoys an enhanced level of distinctive character; and it has not filed any evidence relating to its mark. Consequently, I have only the inherent position to consider.
66. The Opponent has submitted that the earlier mark comprises ordinary English words, the combination of which 'is not a standard way of describing bar or restaurant services'.⁴⁴ It argues that the word 'commons' does not directly describe the services for which the mark stands registered; and that it is, at best, loosely allusive of the House of Commons or public spaces.⁴⁵ The Opponent submits that the earlier mark, therefore, enjoys a normal level of inherent distinctive character.⁴⁶ The Applicant has not explicitly addressed the distinctive character of the Opponent's mark beyond arguing that the element 'commons' is 'allusive and lowly distinctive'.⁴⁷
67. I agree with the Opponent's assessment of a normal level of inherent distinctive character. Whilst I also agree that 'Commons' is not a standard way to describe bar/restaurant services, I will add that the presence of the word 'Club', in the context of the relevant services means that the mark, when considered in its entirety, will likely be seen as somewhat allusive for bar and restaurant services to the extent that 'clubs' serve food and drink.

Likelihood of confusion

68. Confusion can be direct or indirect. Mr Iain Purvis Q. C., (as he then was) as the Appointed Person, explained the difference in the decision of *L.A. Sugar Limited v*

⁴⁴ Opponent's written submissions in lieu of a hearing, [34].

⁴⁵ As above.

⁴⁶ Opponent's written submissions in lieu of a hearing, [34].

⁴⁷ Applicant's counterstatement, [5].

*By Back Beat Inc*⁴⁸. Direct confusion occurs when one mark is mistaken for another. In *Lloyd Schuhfabrik*⁴⁹, the CJEU recognised that the average consumer rarely encounters the two marks side by side but must rely on the imperfect picture of them that they have kept in mind. Direct confusion can therefore occur by imperfect recollection when the average consumer sees the later mark but mistakenly matches it to the imperfect image of the earlier mark in their ‘mind’s eye’. Indirect confusion occurs when the average consumer recognises that the competing marks are not the same in some respect, but the similarities between them, combined with the goods/services at issue, leads them to conclude that the goods/services are the responsibility of the same or an economically linked undertaking.

69. I must keep in mind that a global assessment is required taking into account all of the relevant factors, including the principles a) – k) set out above at [20]. When considering all relevant factors ‘in the round’, I must bear in mind that a greater degree of similarity between goods/services *may* be offset by a lesser degree of similarity between the marks, and vice versa.

70. I have found all of the contested terms to have some level of similarity with the Opponent’s services; ranging from identity to a very low level of similarity (albeit the ‘very low’ finding was by way of a back-up finding to my primary finding of dissimilarity). I have found the marks to be visually similar to a low to medium degree. Aurally speaking, if the Opponent’s mark is articulated in full, the marks will be similar to a medium degree. In instances where the average consumer omits to articulate one or other of the elements ‘The’ or ‘Club’, the marks will have greater aural similarity; although I consider the number of average consumers who articulate the mark as ‘Commons’ to be small. It is important to note that the mental process that would lead the average consumer to refer to the Opponent’s mark in contracted or abbreviated form entails the consumer perceiving the elements ‘The’ and ‘Club’ playing lesser roles within the mark. I have found the marks to have at least a medium level of conceptual similarity by virtue of the shared element

⁴⁸ Case BL O/375/10 at [16].

⁴⁹ *Lloyd Schuhfabrik Meyer and Co GmbH v Klijsen Handel BV* (C-34297) at [26].

‘Common’. The conceptual difference arises by virtue of the less distinctive elements ‘The’ and ‘Club’. My view is that, even where the parties’ terms are identical, the net effect of the differences that I have noted between the marks is sufficient to prevent one mark from being mistaken for the other. I find that there is no likelihood of direct confusion. However, for reasons that I will explain, I do find that, for some of the goods/services, there is a likelihood of *indirect* confusion.

71. In the case of *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said the following 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’.

72. Arnold LJ emphasised 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’.⁵⁰

73. In *L.A. Sugar Limited v Back Beat Inc*⁵¹ Mr Iain Purvis Q. C. (as he then was), as the Appointed Person, explained that:

(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).

⁵⁰ *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207.

⁵¹ Case BL O/375/10.

(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).

74. I remind myself that a finding of a likelihood of indirect confusion should not be made merely because the competing marks share a common element.⁵² I also bear in mind that the above-mentioned categories are not intended to be exhaustive.

75. I consider that the instant case most closely aligns with the second of Mr Purvis' categories. The Contested Mark 'Commons' is wholly incorporated within the Opponent's mark; forming the most distinctive part of it. The presence of the elements 'The' and 'Club' within the earlier mark, in my view, do not alter the meaning of the word 'Commons' beyond its meaning as it appears solus. My view is that a significant proportion of average consumers may presume that the marks relate to the same or economically-related undertakings; for example, 'The Commons Club' might be seen as a 'sister' venue (e.g. a nightclub or bar) to, say, a coffee shop or restaurant named 'Commons'. In such a scenario, the differences between the marks would be understood to denote different venues under the same overarching brand 'Commons'. I find that for the goods/services for which I have found at least a medium level of similarity, there will be a likelihood of indirect confusion. For ease of reference, those goods/services are:

Class 43:

⁵² Case BL O/547/17, [81.4].

Restaurants; restaurant services; pop-up restaurants [...]; coffee bars; mobile coffee bars; pop-up coffee bars; cafes; café services; coffee shops; coffee shop services; pop-up [...] cafes and coffee shops; catering; catering services; mobile catering; mobile catering services; outside catering

Class 30:

coffee, tea, cocoa and espresso beverages; beverages made with tea; beverages made with powdered chocolate; baked goods; viennoiserie; brownies; Ground and whole bean coffee; cocoa; tea (herbal and non-herbal)

76. I do not consider there to be a likelihood of confusion in respect of the contested class 30 goods *chocolate*. Whilst I found that it is at least possible that a coffee bar could sell chocolate, it does not strike me as typical or expected.

77. As to the contested *wholesale services relating to the sale of coffee, tea, cocoa*, which I have found (by way of a back-up finding to my initial assessment of no similarity) to have only a very low level of similarity to the Opponent's services, I do not find a likelihood of confusion.

78. As to the contested 'retail' services, I have found a fairly low level of similarity to the Opponent's services. Bearing in mind Mr Hobbs' observations on the nature of retail services, I do not think that there would be a likelihood of confusion for these terms.

79. Where I have found a likelihood of indirect confusion, I have found this to be the case even where a fairly high level of attention is paid during the purchasing act. I have borne in mind the interdependency principle, according to which a lesser degree of similarity between goods/services *may* be offset by a greater similarity between the marks. However, I do not think that the principle comes into play in the instant case. The visual similarity between the marks is, to my mind, not so strong that it 'tempers' the distance that I have found between the Opponent's *bar and restaurant services* and the Applicant's terms addressed at [76] – [78].

Conclusion

80. The opposition has been partially successful. Subject to any successful appeal, the application:

i) is refused in respect of the following goods and services:

Class 30:

Ground and whole bean coffee; cocoa; tea (herbal and non-herbal); coffee, tea, cocoa and espresso beverages; beverages made with tea; beverages made with powdered chocolate; baked goods; viennoiserie; brownies.

Class 43:

Restaurants; restaurant services; cafes; café services; coffee shops; coffee shop services; catering; catering services; mobile catering; mobile catering services; pop-up restaurants, cafes and coffee shops; coffee bars; mobile coffee bars; pop-up coffee bars; outside catering.

ii) may proceed to registration in respect of the following goods and services:

Class 30:

chocolate

Class 35:

Retail services relating to the sale of coffee, tea, cocoa wholesale services relating to the sale of coffee, tea, cocoa; mail order retail services and electronic shopping retail services connected with the sale of coffee, tea, cocoa.

Costs

81. The Opponent has enjoyed the greatest measure of success overall and is, therefore, entitled to a contribution to its costs based upon the scale published in Tribunal Practice Notice 1/2023, calculated as follows:

Official filing fee for opposition	£100
Preparing statement and considering the other side's statement:	£200*
Preparation of submissions in lieu of a hearing:	£450
Total:	£750

*I have awarded a sum below the minimum threshold in respect of this head of costs for the reason that the Opponent elected not to provide any narrative within its Form TM7 (which it was perfectly entitled to do).

82. I have declined to award a sum in respect of the preparation of the Opponent's evidence for the reason that I consider the matters that the material sought to demonstrate are notorious facts for which evidence was not strictly necessary.

83. Although the Applicant has enjoyed some measure of success to the extent that one of its applied-for terms has survived the opposition, I do not consider it appropriate to apply a deduction to the Opponent's costs award to reflect this. My reason for not doing so is that the Applicant sought to raise the matter of honest concurrent use, which had not been pleaded in its Form TM8,⁵³ at a late stage of the proceedings. My view is that the inappropriateness and timing of the raising of this issue caused the Opponent some unanticipated extra work. I therefore consider the final sum of £750 to be an appropriate costs award for the Opponent.

84. I therefore order COMMONS AT LTD to pay to VIRGIN HOTELS, LLC the sum of £750. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 21st day of July 2026

N. R. Morris

**For the Registrar,
the Comptroller-General**

⁵³ Notice of Defence and Counterstatement.