O/0731/23

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK3694502

BY SHAKEDOWN GROUP LTD

TO REGISTER THE FOLLOWING SERIES OF TRADE MARKS:

IN CLASSES 29, 30, 32, 35 & 43

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 429974

BY DOMINVS HOTELS UK LIMITED

Background and pleadings

1. On 14 September 2021, Shakedown Group Ltd ("the applicant") applied to register the series of trade marks shown on the cover page of this decision in the UK. The application was published for opposition purposes on 8 October 2021. The services applied for are as follows:

> Class 29: Burgers; Chicken burgers; Meat burgers; Meat products being in the form of burgers; Milkshakes; Chips [french fries]; French fries; Frozen french fries; Potato fries; Waffle fries; Desserts made from milk products; Chilled dairy desserts.
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> Class 30: Burgers contained in bread rolls; Cheeseburgers [sandwiches]; Waffles; Chocolate desserts; Sandwich wraps [bread]; Sandwiches; Sandwiches containing chicken; Sandwiches containing hamburgers; Sandwiches containing meat; Sandwiches containing minced beef.
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> Class 32: Soft drinks; Carbonated soft drinks; Non-carbonated soft drinks.
>
> Class 35: Retail services in relation to desserts; Wholesale services in relation to desserts; Administration of the business affairs of franchises; Advice in the running of establishments as franchises; Advisory services (Business -) relating to the establishment of franchises; Advisory services (Business -) relating to the operation of franchises; Advisory services relating to publicity for franchisees; Advisory services relating to the operation of franchises; Assistance in business management within the framework of a franchise contract; Assistance in franchised commercial business management; Business advisory services relating to the establishment and operation of franchises; Business assistance relating to starting and running a franchise; Business assistance relating to the establishment of franchises; Provision of assistance [business] in the operation of franchises; Business advice relating to restaurant franchising; Business advisory services relating to the running of restaurants; Business advisory services relating to the setting up of restaurants; Business management

assistance in the establishment and operation of restaurants; On-line ordering services in the field of restaurant take-out and delivery.

Class 43: Fast food restaurants; Restaurant services for the provision of fast food; Take-away fast food services; Restaurant services; Restaurant services for the provision of fast food; Restaurants; Carry-out restaurants; Carvery restaurant services; Fast food restaurants; Fast-food restaurant services; Grill restaurants; Mobile restaurant services; Providing food and drink for guests in restaurants; Providing restaurant services; Provision of food and drink in restaurants; Take-out restaurant services.

2. The application was partially opposed by Dominvs Hotels UK Limited ("the opponent") on 7 January 2022. The opposition is based upon section 5(2)(b) of the Trade Marks Act 1994 ("the Act") and within the form TM7 the opponent has listed the following terms as being the subject of this opposition:

Class 43: Provision of food and drink in restaurants; Take-out restaurant services.

3. The opponent relies on the following trade mark:

UK3346224

Shakedown

Filing date: 17 October 2018
Registration date: 11 January 2019

Relying upon all goods and services for which the earlier mark is protected, namely:

Class 30: Coffee; Coffee (Unroasted -); Coffee [roasted, powdered, granulated, or in drinks]; Coffee bags; Coffee based beverages; Coffee based drinks; Coffee based fillings; Coffee beans; Coffee beverages; Coffee beverages with

milk; Coffee capsules; Coffee concentrates; Coffee drinks; Coffee essence; Coffee essences; Coffee essences for use as substitutes for coffee; Coffee extracts; Coffee extracts for use as substitutes for coffee; Coffee flavorings; Coffee flavorings [flavourings]; Coffee flavourings; Coffee in brewed form; Coffee in ground form; Coffee in whole-bean form; Coffee mixtures; Coffee oils; Coffee pods; Coffee substitutes; Coffee substitutes (Vegetal preparations for use as -); Coffee substitutes [artificial coffee or vegetable preparations for use as coffee]; Coffee substitutes [grain or chicory based]; Coffee, teas and cocoa and substitutes therefor; Coffee-based beverage containing milk; Coffee-based beverages; Coffee-based beverages containing ice cream (affogato).

Class 32: Coffee-flavored ale; Coffee-flavored beer; Coffee-flavored soft drinks.

Class 33: Coffee-based liqueurs.

Class 40: Coffee roasting and processing; Coffee-grinding.

Class 43: Coffee bar services; Coffee shop services; Coffee shops; Coffee supply services for offices [provision of beverages].

4. The opponent claims that the marks are similar and that the services at issue are identical/similar, resulting in a likelihood of confusion.

5. The applicant filed a counterstatement denying the claims made.

6. Both parties are unrepresented.

7. Both parties provided evidence. Neither party requested a hearing and no submissions in lieu were filed. This decision is therefore taken following careful consideration of the papers.

8. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Act relied on in

these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case-law of EU courts.

Evidence

9. The applicant's evidence consists of a witness statement together with two exhibits by Alex Watson dated 22 December 2022, who is the operations manager of the applicant company. The evidence consists of undated screenshots of google searches of both companies and undated screenshots from both parties' websites. The evidence provided does not assist the applicant as not only is it undated but also, I must compare the marks and their specifications as registered and as per the details of the Form TM7. The earlier mark is not subject to proof of use, as I will detail later in this decision and therefore, the opponent can rely upon their mark as it is registered.

10. The opponent's evidence is provided by Hasham Soliman who is the General Manager of the opponent company. The witness statement is dated 17 March 2023 and has one exhibit. Again, this evidence consists of undated screenshots of the parties' websites and google searches and as for the same reasons outlined above, it does not assist the opponent.

DECISION

11. Section 5(2)(b) is being relied upon and is as follows:

> "5(2) A trade mark shall not be registered if because-
>
> > (b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark".

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

"6. (1) In this Act an "earlier trade mark" means -

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

(2) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of subsection (1)(a) or (b), subject to its being so registered".

13. In these proceedings, the opponent is relying upon the trade mark shown in paragraph 3, above, which qualifies as an earlier trade mark under the above provisions. As this trade mark had not completed its registration process more than 5 years before the filing date of the application in suit, it is not subject to proof of use, as per section 6A of the Act. The opponent can, as a consequence, rely upon all of the goods and services it has identified.

Case law

14. The following principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG,* Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc,* Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV,* Case C-425/98, *Matratzen Concord GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM),* Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH,* Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM,* Case C-334/05P and *Bimbo SA v OHIM,* Case C-591/12P:

(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 be dominated by one or more of its components;

(f) however, it is also 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 great degree of similarity between the marks, and vice versa;

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

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

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

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

Comparison of goods and services

15. 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 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".

16. 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.

17. In *Boston Scientific Ltd v OHIM*, Case T-325/06, the General Court stated that "complementary" means:

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

18. The goods and services at issue are:

Applicant's services	**Opponent's goods & services**
Class 43: Provision of food and drink in restaurants; Take-out restaurant services.	Class 30: Coffee; Coffee (Unroasted -); Coffee [roasted, powdered, granulated, or in drinks]; Coffee bags; Coffee based beverages; Coffee based drinks; Coffee based fillings; Coffee beans; Coffee beverages; Coffee beverages with milk; Coffee capsules; Coffee concentrates; Coffee drinks; Coffee essence; Coffee essences; Coffee essences for use as substitutes for coffee; Coffee extracts; Coffee extracts for use as substitutes for coffee; Coffee flavorings; Coffee flavorings [flavourings]; Coffee

	flavourings; Coffee in brewed form; Coffee in ground form; Coffee in whole-bean form; Coffee mixtures; Coffee oils; Coffee pods; Coffee substitutes; Coffee substitutes (Vegetal preparations for use as -); Coffee substitutes [artificial coffee or vegetable preparations for use as coffee]; Coffee substitutes [grain or chicory based]; Coffee, teas and cocoa and substitutes therefor; Coffee-based beverage containing milk; Coffee-based beverages; Coffee-based beverages containing ice cream (affogato). Class 32: Coffee-flavored ale; Coffee-flavored beer; Coffee-flavored soft drinks. Class 33: Coffee-based liqueurs. Class 40: Coffee roasting and processing; Coffee-grinding. Class 43: Coffee bar services; Coffee shop services; Coffee shops; Coffee supply services for offices [provision of beverages].

Provision of food and drink in restaurants

19. I consider that the purpose of the above services from the applicant's specfication will overlap with the opponent's 'coffee shop services' as both provide food and drink. They differ in that a restaurant will likely be more for full meals and a coffee shop will be more for drinks and snacks. There might be an overlap in user, nature and they

could be in competition- a person might be choosing between a more involved meal or a smaller snack/small eats option. There could be an overlap in trade channels but they are not complementary. I therefore find them to be similar to a high degree.

Take-out restaurant services

20. Again, this service is concerned with the provision of food and drink but in this instance, to be consumed off the premises. Although 'coffee shop services' from the opponent's specification will likely include a provision of seating for customers, it is also generally possible to purchase food and drink to consume off premises. There is, therefore, overlap in intended purpose, users and trade channels and there may be competition between the services. They are not complementary and although there would be overlap in use and nature, it will differ in the types of food and drink available. I therefore find them to be similar to a high degree.

Average consumer and the purchasing act

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

22. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited,* [2014] EWHC 439 (Ch), Birss J. (as he then was) described the average consumer in these terms:

> "60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The word "average" denotes that the person is typical. The term "average" does not denote some form of numerical mean, mode or median."

23. In my view, the average consumer of the services at issue is a member of the general public although I do not discount that there could be business users as well. The purchasing process is likely to be dominated by visual considerations, as the average consumer is likely to select the services at issue following inspection of the premises frontage, websites and advertisements. However, given that word-of-mouth recommendations may also play a part, I do not discount that there will be an aural component to the selection of the services.

24. There is a varying degree of cost for the services at issue ranging from very low to high and the average consumer will be considering the type of food and drink provided and the nature of the establishment. I believe that, generally speaking, the average consumer will pay a medium degree of attention to the purchasing process.

Comparison of the marks

25. 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."

26. It would be wrong, therefore, to artificially dissect the trade marks, although, it is necessary to take into account the distinctive and dominant components of the marks

and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

27. The respective trade marks are shown below:

Earlier Mark	**Contested Marks**
Shakedown	 

28. The earlier mark is a word mark containing two conjoined words ‘shake and ‘down’ conjoined. I believe the overall impression lies in the combination of these words.

29. The contested marks both consist of the words ‘Shake’ and ‘down’ presented on top of one another in the same typeface and size. The words are presented within the middle of the outline of a take away cup and straw. This device is of low (or no) distinctiveness for the services at issue. One mark has a white background within the words and outline in black and the other mark has a black circle background with the writing and outline in white. In my opinion, the overall impression lies in the combination of the two-word elements, with them being co-dominant. The device is not insignificant but due to its simplistic style and link to the services at issue together with placement behind the words, I find it to play a smaller role than the words.

30. Visually, the earlier mark comprises of one word (consisting of two conjoined words) made up of nine letters. This word is found identically within the contested mark albeit it is split into two separate words and presented one on top of the other. Around those words is the outline of a takeaway cup with a straw poking out of the top. Given the earlier mark is wholly incorporated within the contested marks but also considering the extra matter within the contested marks which has no replication in the earlier mark, I find them to be visually similar to between a medium and high degree.

31. Both marks will be pronounced the same as they both contain the same two words placed one after another (even though the earlier mark is presented as one word). I therefore find them to be aurally identical.

32. Conceptually, the earlier mark 'shakedown' does have a dictionary definition (i.e. a reorganisation of an organisation or system to make it more efficient).[1] However, I consider that this will not be known by a significant proportion of consumers. Rather, I believe it will most likely be viewed as a portmanteau of the words 'shake' and 'down' and in view of the goods and services the earlier mark is registered for, the average consumer might believe 'shake' to being a shortening of 'milkshake' with 'down' being given its ordinary dictionary definition. As the words are presented separately in the contested marks, the average consumer will likely give the same meaning as above to the words in the mark, especially in light of the services at issue and the inclusion of a takeaway cup with a straw within the mark. I therefore find the marks to be conceptually identical.

Distinctive Character of the Earlier Mark

33. 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

[1] https://www.collinsdictionary.com/dictionary/english/shakedown

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 WindsurfingChiemsee 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)."

34. The opponent did not file any evidence and has made no claim of an enhanced level of distinctiveness in its earlier mark so I will base my decision on the inherent distinctiveness of the earlier mark.

35. The opponent's mark consists of the portmanteau of two ordinary dictionary terms. The word 'shake' could be said to be descriptive or allusive of the services however, it appears with another word which does not directly describe the goods being provided and does not appear allusive or suggestive. Therefore, I find that the opponent's earlier marks can be said to be inherently distinctive to between a low and medium degree.

Likelihood of Confusion

36. There are two ways in which confusion between trade marks may arise. The first is direct confusion i.e., where one mark is mistaken for the other. The second is indirect confusion i.e. where the consumer appreciates that the marks are different, but the

similarities between the marks lead the consumer to believe that the respective goods or services originate from the same or a related source.

37. In *L.A. Sugar Limited v 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.

38. I have reached the following conclusions above regarding the marks:

- For the earlier mark the overall impression lies in the word itself. For applicant's marks, I consider the word element to be the dominant component and that the device will play a lesser role.
- The marks are visually similar to between a medium and high degree.
- The marks are aurally and conceptually identical.
- The earlier mark is inherently distinctive to between a low and medium degree.
- The services in question are similar to a high degree.
- The average consumer is likely to be a member of the general public and will be paying a medium degree of attention. The purchasing process is likely to be dominated by visual considerations.

39. Given I have found that the earlier mark is wholly replicated within the contested mark, they are aurally and conceptually identical and that the device within the contested mark is of low (or no) distinctiveness for the services in question, I am satisfied that the addition of the device could be overlooked by the average consumer paying a medium degree of attention and that they could indeed mistake one mark for the other. Consequently, I find there to be direct confusion between the marks.

40. In the event that I am wrong in finding there to be direct confusion, I will now go on to consider whether there could be indirect confusion. Mr Iain Purvis Q.C. said further in *L.A. Sugar Limited v Back Beat Inc*:

> "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)."

41. These examples are not exhaustive but provide helpful focus, as was confirmed by Arnold LJ in *Liverpool Gin Distillery Limited & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207:

> "This is a helpful explanation of the concept of indirect confusion, which has frequently been cited subsequently, but as Mr Purvis made clear it was not intended to be and exhaustive definition."[2]

42. In the case of indirect confusion, the average consumer has noticed the differences between the marks but still believes them to be linked. The difference that the average consumer might notice is the words 'shake' and 'down' being presented separately and the addition of the device (the takeaway cup and straw). As previously mentioned, I have found the device elements to be of low (or no) distinctiveness for the services in issue. The average consumer, seeing that the extraneous matter in the mark as being of low (or no) distinctiveness and a slight change in the presentation of the word element, will then see the contested marks as simply another way of using the earlier mark. Therefore, I find that indirect confusion is likely to occur.

Conclusion

43. The opposition succeeds in its entirety and the application is refused for those services that were opposed, namely:

> Class 43: Provision of food and drink in restaurants; Take-out restaurant services.

44. The applicant may proceed to registration for the goods and services which were not opposed, namely:

> Class 29: Burgers; Chicken burgers; Meat burgers; Meat products being in the form of burgers; Milkshakes; Chips [french fries]; French fries; Frozen french fries; Potato fries; Waffle fries; Desserts made from milk products; Chilled dairy desserts.
>
> Class 30: Burgers contained in bread rolls; Cheeseburgers [sandwiches]; Waffles; Chocolate desserts; Sandwich wraps [bread]; Sandwiches;

[2] Paragraph 12

Sandwiches containing chicken; Sandwiches containing hamburgers; Sandwiches containing meat; Sandwiches containing minced beef.

Class 32: Soft drinks; Carbonated soft drinks; Non-carbonated soft drinks.

Class 35: Retail services in relation to desserts; Wholesale services in relation to desserts; Administration of the business affairs of franchises; Advice in the running of establishments as franchises; Advisory services (Business -) relating to the establishment of franchises; Advisory services (Business -) relating to the operation of franchises; Advisory services relating to publicity for franchisees; Advisory services relating to the operation of franchises; Assistance in business management within the framework of a franchise contract; Assistance in franchised commercial business management; Business advisory services relating to the establishment and operation of franchises; Business assistance relating to starting and running a franchise; Business assistance relating to the establishment of franchises; Provision of assistance [business] in the operation of franchises; Business advice relating to restaurant franchising; Business advisory services relating to the running of restaurants; Business advisory services relating to the setting up of restaurants; Business management assistance in the establishment and operation of restaurants; On-line ordering services in the field of restaurant take-out and delivery.

Class 43: Fast food restaurants; Restaurant services for the provision of fast food; Take-away fast food services; Restaurant services; Restaurant services for the provision of fast food; Restaurants; Carry-out restaurants; Carvery restaurant services; Fast food restaurants; Fast-food restaurant services; Grill restaurants; Mobile restaurant services; Providing food and drink for guests in restaurants; Providing restaurant services;

Costs

45. Award of costs are governed by Tribunal Practice Notice (“TPN”) 2/2016. The opponent has been successful and would normally be entitled to a contribution towards its costs.

46. However, as the parties are unrepresented, at the conclusion of the evidence rounds the tribunal wrote to the parties and invited them to indicate whether they intended to make a request for an award of costs. The parties were informed that, if so, they should complete a Pro Forma, providing details of their actual costs and accurate estimates of the amount of time spent on various activities associated with the proceedings. They were informed that "if the pro-forma is not completed and returned, costs, other than official fees arising from the action (excluding extensions of time) may not be awarded".

47. The opponent did not file a completed Pro Forma. That being the case, I award the opponent the sum of £100 in respect of the official fee only.

Total	**£100**

48. I therefore order Shakedown Group Ltd to pay Dominvs Hotels UK Limited the sum of £100. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated 31st of July 2023

L Nicholas
For the Registrar