

**O/0734/23**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF  
TRADE MARK APPLICATION NO. UK3782302  
IN THE NAME OF WD FF LIMITED  
TO REGISTER AS A TRADE MARK**

**HARRY'S COUNTRY KITCHEN**

**IN CLASSES 9, 29, 30, 35 and 39**

**AND**

**IN THE MATTER OF OPPOSITION THERETO  
UNDER NUMBER 435744  
BY HARRY-BROT GMBH**

## BACKGROUND AND PLEADINGS

1. On 28 April 2022, WD FF Limited (“the applicant”) applied to register trade mark number UK3782302 for the mark shown on the cover page of this decision in the United Kingdom.
2. The application was accepted and was published for opposition purposes on 20 May 2022, in respect of goods and services in classes 9, 29, 30, 35 and 39, as listed in Annex A of this decision.
3. The application is opposed by Harry-Brot GmbH (“the opponent”). The opposition was filed on 22 August 2022 and is based upon Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opposition is directed against some of the goods only in classes 29 and 30 in the application, as listed in the table under paragraph 19 of this decision.
4. The opponent relies upon its UK designation of the following International Registration:

# Harry

International Registration No. WO1609926

International Registration date: 21 May 2021

UK Date of Designation: 21 May 2021

Priority date claimed: 23 November 2020<sup>1</sup>

Date Protection Granted in the UK: 15 March 2022

Protected for goods in the UK in Classes 29 and 30

Relying on all goods, as listed in the table under paragraph 19.

5. The opponent submits that there is a high degree of conceptual, visual and aural similarity between the marks at issue, and that the opposed goods are highly similar

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<sup>1</sup> From German trade mark No. 30 2020 116 582.

to the goods protected by the earlier mark. It submits that the similarities are such that there is a likelihood of confusion between the application mark and the earlier mark, and that the application should not be registered on the grounds of section 5(2)(b) of the Act.

6. The applicant filed a counterstatement denying the claims. It submits that the applied-for mark is visually, aurally and conceptually “very different” to the opponent’s trade mark. Further, while it admits that some of the goods are identical, it denies that all of the goods are identical and/or similar to the opponent’s goods. The applicant denies that there is a likelihood of confusion, including a likelihood of association, and requests that the application be allowed to proceed to registration in respect of all the opposed goods.

7. Both parties filed written submissions which will be referred to as and where appropriate during this decision. Neither party elected to file evidence and neither party requested a hearing, therefore this decision is taken following careful consideration of the papers.

8. In these proceedings, the opponent is represented by Hogan Lovells International LLP and the applicant is represented by Groom Wilkes & Wright LLP.

### **Preliminary Indication**

9. I note that, in accordance with rule 19(2) of the Trade Mark Rules 2008, a Preliminary Indication (PI) was issued to both parties on 12 October 2022, where it was considered that, notwithstanding any similarity or identity that might be found between the parties’ respective specifications, there was insufficient similarity between the parties’ marks to support a finding of a likelihood of confusion between the marks.

10. I acknowledge the applicant’s submission that the reasoning behind the PI issued in favour of the applicant was correct. However, PIs are issued as an indication of the likely outcome on a prima facie basis, prior to the submissions of each of the parties being filed, and are not binding.

11. As I am not bound by the PI, following careful consideration of the facts before me, I will make my own assessment of the likelihood of confusion between the competing marks and the opponent's goods against the opposed goods of the application.

## **DECISION**

12. Although the UK has left the European Union, 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. Therefore, this decision contains references to the trade mark case-law of the European courts.

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

13. Section 5(2)(b) is relied on and reads as follows:

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

...

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

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

14. Section 5A states:

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

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

...”

16. The trade mark upon which the opponent relies qualifies as an earlier trade mark under the above provisions. As the trade mark had not been protected for more than five years at the date the application was filed, it is not subject to the use provisions contained in section 6A of the Act. The opponent is, therefore, entitled to rely upon it in relation to all of the goods indicated without having to prove that genuine use has been made of them.

17. I am guided by the following principles which 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 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 to mind the earlier mark, 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 will wrongly believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

### Comparison of goods

18. Section 60A of the Act provides:

“(1) For the purposes 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 1979.”

19. The goods to be compared are:

<b>Opponent’s goods</b>	<b>Applicant’s goods</b>
<u>Class 29</u> <i>Jams.</i>	<u>Class 29</u> <i>jellies, jams, compotes, jellies, jams, fruit preserves, vegetable preserves, compotes.</i>
<u>Class 30</u> <i>Snacks, namely bakery products containing cheese, cheese preparations, jams, fruit and nuts and/or made from</i>	<u>Class 30</u> <i>chocolate; chocolate products; flour and preparations made from cereals and/or rice and/or flour; bread, biscuits, cookies,</i>

<p><i>cereal preparations; chocolate; sugar; honey; treacle; fresh, frozen and pre-baked bread and bakery products and rolls; baguettes; baguette rolls; rolls; grain rolls; ciabatta; bagels; donuts; muffins; pretzel products [bread and bakery products and rolls]; puff pastry products; croissants; Danish pastries; fatty pastries; long-life pastries; bread; fine bakery products; fine pastry products; muesli; muesli bars; snacks made from muesli; snacks in the form of bakery products with fillings consisting mainly of meat, meat products, cheese, cheese preparations, jams, fruit and nuts; fruit sauces.</i></p>	<p><i>cakes, pastry goods; honey, treacle; pizza; meat pies; snack foods made from cereal; snack foods made from wheat; snack foods made from granola; chicken roll; turkey roll; frozen dough; frozen pizzas; frozen cakes; frozen pastry stuffed with meat and/or poultry and/or fish and/or vegetables; frozen pies, frozen meat pies, fruit pies, pizza pies, apple pies, frozen pot pies, fresh pies, vegetable pies, pork pies, frozen pies containing meat, frozen pies containing fish, pies containing poultry, pies containing game, sweet pies, sausage rolls.</i></p>
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20. I note the repetition of the terms “*jellies, jams, compotes*” as filed under the applicant’s Class 29 specification.

21. In *Gérard Meric v OHIM*, Case T-133/05, the General Court (“GC”) stated that:

“In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut für Lernsysteme v OHIM - Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark”.<sup>2</sup>

22. In *Canon*, Case C-39/97, the Court of Justice of the European Union (“CJEU”) stated that:

“In assessing the similarity of the goods or services concerned, ... all the relevant factors relating to those goods or services themselves should be taken

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<sup>2</sup> Paragraph 29

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”.<sup>3</sup>

23. Additionally, the factors for assessing similarity between goods and services identified in *British Sugar Plc v James Robertson & Sons Limited* (“Treat”) [1996] R.P.C. 281 include an assessment of the users and the channels of trade of the respective goods or services.

24. 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. In *Boston Scientific Ltd v OHIM*, Case T-325/06, the GC stated that “complementary” means:

“...there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking”.<sup>4</sup>

25. For the purposes of considering the issue of similarity of goods, it is permissible to consider groups of terms collectively where appropriate. In *Separode Trade Mark*, BL O-399-10, Mr Geoffrey Hobbs QC (as he then was), sitting as the Appointed Person, said:

“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.”<sup>5</sup>

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<sup>3</sup> Paragraph 23

<sup>4</sup> Paragraph 82

<sup>5</sup> Paragraph 5

26. While making my comparison, I bear in mind the comments of Floyd J. (as he then was) in *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch):

"... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise. ... Nevertheless the principle should not be taken too far. Treat was decided the way it was because the ordinary and natural, or core, meaning of 'dessert sauce' did not include jam, or because the ordinary and natural description of jam was not 'a dessert sauce'. Each involved a straining of the relevant language, which is incorrect. 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."<sup>6</sup>

27. In its written submissions, dated 17 April 2023, the opponent has included a comparison of the terms which it considers to be identical or highly similar. I do not intend to fully reproduce the opponent's submissions here, however, I have taken them into consideration in making my own comparisons.

28. In its counterstatement, the applicant admits that some of the goods, such as 'jam' in Class 29 and 'bread' in Class 30 are identical to the earlier goods. In its written submissions, dated 10 March 2023, it has provided a table, reproduced below, where it admits that the following goods are identical and/or similar to the earlier protected goods, although it denies that the remaining goods are identical or similar:

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<sup>6</sup> Paragraph 12

The following goods are identical and/or similar:

Opponent's goods	Applicant's goods
Class 29: Jams.	Class 29: Jellies, jams, compotes, jellies, jams, fruit preserves
Class 30: Snacks, namely bakery products containing cheese, cheese preparations, jams, fruit and nuts and/or made from cereal preparations; chocolate; sugar; honey; treacle; fresh, frozen and pre-baked bread and bakery products and rolls; baguettes; baguette rolls; rolls; grain rolls; ciabatta; bagels; donuts; muffins; pretzel products [bread and bakery products and rolls]; puff pastry products; croissants; Danish pastries; fatty pastries; long-life pastries; bread; fine bakery products; fine pastry products; muesli; muesli bars; snacks made from muesli; snacks in the form of bakery products with fillings consisting mainly of meat, meat products, cheese, cheese preparations, jams, fruit and nuts; fruit sauces.	Class 30: Chocolate; chocolate products; flour and preparations made from cereals and/or rice and/or flour; bread, biscuits, cookies, cakes, pastry goods, honey, treacle, snack foods made from cereal; snack foods made from wheat, snack foods made from granola.

29. I acknowledge that no indication has been given in the above table as to the level of similarity which exists for each specific item, although many of the goods are self-evidently identical, or they encompass/are encompassed by the broader terms within the specifications and as such are to be considered identical as per the principle outlined in *Merix*. Given the applicant's admission of identity and/or similarity of the above listed goods, I will proceed to compare the applicant's remaining goods in classes 29 and 30 against the earlier goods, grouping them together where this is appropriate, as per *Separode*.

## Contested goods in Class 29

### *Vegetable preserves*

30. The contested “*Vegetable preserves*” and the opponent’s “*Jams*” are both made from preserving foodstuffs, with the earlier jams using fruit and sugar, as opposed to the specified vegetables of the contested preserves. Both goods are frequently used alongside other foods, however, as per the guidance in *YouView* which refers to the “*Treat*” decision, it is my view that the core meaning of each of the goods is different. To my mind, “*Vegetable preserves*” would commonly comprise vegetables, either whole or cut into pieces, which have been preserved in oil, vinegar or salt water, or may be in the form of a savoury chutney. While there is likely to be an overlap in users, the purpose of the goods is distinct and the methods of use differ. I acknowledge the availability of savoury chilli “jams” and the like, however, to my mind, “*Jams*” are essentially sweet, and are likely to be spread on bread or used as a filling in cake, while “*Vegetable preserves*” are often served as an accompaniment to cooked meats or cheese, or, for products such as pickled onions or preserved olives, may be eaten alone as a snack. There will be an overlap in trade channels, although the goods are unlikely to be positioned on the same shelves, or even in the same aisles in outlets such as supermarkets. Neither are the goods in competition or complementary. As outlined in *Boston Scientific*, I do not consider that the average consumer would automatically expect “*Jams*” to be provided by the same undertaking as the applicant’s “*Vegetable preserves*”. I therefore find that any overlap between the competing goods to be insufficient for a finding of similarity.

## Contested goods in Class 30

*Meat pies; frozen pastry stuffed with meat and/or poultry and/or fish and/or vegetables; frozen pies, frozen meat pies, fruit pies, apple pies, frozen pot pies, fresh pies, vegetable pies, pork pies, frozen pies containing meat, frozen pies containing fish, pies containing poultry, pies containing game, sweet pies.*

31. I note the definition of a pie as being “a baked food consisting of a sweet or savoury filling in a pastry-lined dish, often covered with a pastry crust”.<sup>7</sup> As such, I consider that the applicant’s above listed pies and frozen stuffed pastry goods to be encompassed by the opponent’s broad terms “*fine bakery products; fine pastry products*”, rendering the competing goods identical as per the principle outlined in *Meric*.

*Chicken roll; turkey roll.*

32. No explanation has been provided as to what is meant by the terms “*chicken roll*” and “*turkey roll*”, which the opponent submits are similar to its own “*snacks in the form of bakery products with fillings consisting mainly of meat, meat products, cheese, cheese preparations, jams, fruit and nuts*”. While the Nice Classification is purely administrative,<sup>8</sup> in *Altecnic Ltd’s Trade Mark Application*, the Court of Appeal (“COA”) decided that “the registrar is entitled to treat the Class number in the application as relevant to the interpretation of the scope of the application, for example, in the case of an ambiguity in the list of the specification of goods.”<sup>9</sup> Given that the contested goods have been included in the Class 30 specification, rather than Class 29 which includes raw and cooked meats, without evidence to the contrary, I construe the applicant’s “*Chicken roll; turkey roll*” as being cooked chicken or turkey which is encased in pastry or used as a filling for bakery products such as bread rolls. As such, I find that the contested goods would be covered by the opponent’s broader term “*snacks in the form of bakery products with fillings consisting mainly of meat, meat products, cheese, cheese preparations, jams, fruit and nuts*” and therefore the goods are identical as per *Meric*.

*Pizza; frozen dough; frozen pizzas; frozen cakes; pizza pies; sausage rolls.*

33. I consider that the applicant’s above listed goods are covered by the wider term “*fine bakery products*” as well as its “*fresh, frozen and pre-baked bread and bakery products and rolls*” and as such the goods are *Meric* identical. If I have given too

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<sup>7</sup> Source: [www.collinsdictionary.com](http://www.collinsdictionary.com), accessed on 18 July 2023.

<sup>8</sup> See *Mould Pro* decision Case T-794/21 at [22-28].

<sup>9</sup> *Altecnic Ltd’s Trade Mark Application* [2002] RPC 34 (COA) at [42]. .

much weight to what would be encompassed under the term “bakery products”, then the competing goods are highly similar in nature, purpose and method of use, with an overlap in users and trade channels.

34. A degree of similarity between the services is essential for there to be a finding of likelihood of confusion: *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA.<sup>10</sup> Therefore, there is no likelihood of confusion to consider for those goods which I found to be dissimilar, being “*Vegetable preserves*” in Class 29.

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

35. 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 was then) described the average consumer in these terms:

“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”.<sup>11</sup>

36. 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.

37. In their respective written submissions, both parties submit that the average consumer of the goods at issue will be the general public. The applicant submits that the level of attention paid will be slightly higher than the norm, while the opponent submits that the likelihood of confusion should be assessed on the part of the public

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<sup>10</sup> At [49].

<sup>11</sup> Paragraph 60.

whose attention is lower, therefore, it submits that in this case, the level of attention paid by the consumer is low.

38. Given that the competing goods are all relatively common foodstuffs, I agree that the average consumer for the competing goods will be the general public, although I do not discount business consumers, particularly those who purchase the goods in order to provide a food service.

39. The cost of the goods will be relatively low, and for some may be a somewhat regular purchase, where they are likely to be self-selected from a bakery, supermarket or via the internet, and will be selected by predominantly visual means, although I do not discount oral recommendations.

40. Considerations during selection of the goods may include specific dietary requirements, including food allergies and intolerances, as well as personal taste choices. Overall, it is my view that the average consumer who is a member of the general public will pay a low to medium degree of attention when choosing the goods, while the business consumer is likely to pay a higher degree of attention to the selection, but not to the highest degree.

### **Comparison of marks**



41. 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 in *Bimbo SA v OHIM* Case C-591/12P, 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.”<sup>12</sup>

42. 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.

43. The respective trade marks are shown below:

Opponent's trade mark	Applicant's trade mark
	

44. The opponent submits that the overall impressions created by the marks at issue are similar to a moderate to high degree, with the word “HARRY”, which is common to both marks, being dominant, the additional words at the end of the application mark being descriptive and/or non-distinctive.

45. The applicant submits that although the marks share the same first five letters, the remaining two elements in the contested mark make a significant visual difference and that aurally, the respective marks are also very different.

### **Overall impression**

46. The opponent's mark consists of a single word “Harry”, presented in a standard black typeface in title case, without any other elements to contribute to the overall

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<sup>12</sup> Paragraph 34

impression. The overall impression conveyed by the mark therefore rests in the word itself.

47. The applicant's mark comprises three words, "HARRY'S COUNTRY KITCHEN", which is presented in a standard typeface in capital letters, without any other elements to contribute to the overall impression. In my view, the average consumer will view the words "COUNTRY KITCHEN" as alluding to the provenance of the goods at issue. Therefore, I consider that the word "HARRY'S" will make the greatest contribution to the overall impression, although the words "COUNTRY KITCHEN" will not go unnoticed.

### **Visual comparison**

48. The opponent's mark consists of five letters which make up the single word "Harry". The applicant's mark consists of three words, the first word of which contains the possessive apostrophe, "HARRY'S COUNTRY KITCHEN". I do not consider the difference in capitalisation/title case is relevant to the visual impact, as the registration of a word mark gives protection irrespective of capitalisation: see *Bentley Motors Limited v Bentley 1962 Limited*, BL O/158/17. The competing marks have the first five letters, "H A R R Y", in common. In *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02, the GC noted that the beginning of words tend to have more visual and aural impact than the ends, although I accept that this is not always the case. However, the additional 'S and the words "COUNTRY KITCHEN" which are present only in the applicant's mark create a visual disparity between the marks, with the applicant's mark therefore more than three times the length of the earlier mark. In *dm-drogerie markt GmbH & Co. KG v OHIM*, Case T-304/10, the GC noted that in the case of word signs which are relatively short, the differences between marks of different lengths will be more easily grasped by the average consumer.<sup>13</sup> While the earlier mark is reproduced in its entirety within the applicant's mark, considering the marks as a whole, I find the marks to be visually similar to no more than a medium degree.

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<sup>13</sup> At [42].

## **Aural comparison**

49. The common element of the competing marks are the letters “H A R R Y”. The earlier mark will be articulated in its entirety as two syllables, “HA- REE”. The contested mark, when voiced in its entirety, will be pronounced as six syllables, “HA- REASE-KUN-TREE-KIT-CHIN”, and in these circumstances, I consider the contested mark to be aurally similar to the earlier mark to a low degree. The opponent submits that the applicant’s mark is likely to be shortened to “HARRY’S” in colloquial conversation. I accept that this may be true of a proportion of consumers, and as such, under these conditions, I consider the marks to be aurally similar to a high degree, differing only by virtue of the second syllable of the competing marks, being pronounced “REE” in the opponent’s mark, and “REASE” in the applicant’s mark.

## **Conceptual comparison**

50. I consider that the average UK consumer would recognise “Harry” as a male forename. In *Luciano Sandrone v European Union Intellectual Property Office (EUIPO)*, Case T-268/18, the GC held:

“84. Similarly, according to the case-law, conceptual similarity means that the signs at issue convey analogous semantic content (judgment of 11 November 1997, *SABEL*, C-251/95, EU:C:1997:528, paragraph 24).

85. Therefore, a first name or a surname which does not convey a ‘general and abstract idea’ and which is devoid of semantic content, is lacking any ‘concept’, so that a conceptual comparison between two signs consisting solely of such first names or surnames is not possible.

86. Conversely, a conceptual comparison remains possible where the first name or surname in question has become the symbol of a concept, due, for example, to the celebrity of the person carrying that first name or surname, or where that first name or that surname has a clear and immediately recognisable semantic content.

87. The Court has thus previously held that the relevant public would perceive marks containing surnames or first names of persons as having no specific conceptual meaning, unless the first name or surname is particularly well known as the name of a famous person (see, to that effect, judgments of 18 May 2011, *IIC v OHIM — McKenzie (McKENZIE)*, T-502/07, not published, EU:T:2011:223, paragraph 40; of 8 May 2014, *Pedro Group v OHIM — Cortefiel (PEDRO)*, T-38/13, not published, EU:T:2014:241, paragraphs 71 to 73; and of 11 July 2018, *ANTONIO RUBINI*, T-707/16, not published, EU:T:2018:424, paragraph 65).”

51. In view of the above, I consider that the forename “Harry” alone does not have any clear and recognisable semantic content. I find nothing to suggest that the earlier mark would be perceived as pertaining to a specific (famous) person of that name. Meanwhile, while the name HARRY within the contested mark has no concept, the overall idea conveyed by the applicant’s mark as a whole is that the goods at issue are derived from the country kitchen of someone called Harry, which gives the allusion that those goods are wholesome or rustic. Given that the earlier mark has no such conceptual identity, I find the marks to be conceptually dissimilar.

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

52. The distinctive character of a trade mark can be appraised only, first, by reference to the goods in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public – *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91.

53. 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).”

54. Registered trade marks possess varying degrees of inherent distinctive character, being lower where they are allusive or suggestive of a characteristic of the goods and services, ranging up to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use made of it. The opponent has not claimed that its mark has enhanced distinctiveness and no evidence of use has been filed. Therefore, I only have the inherent characteristics of the mark to consider.

55. The earlier mark comprises solely of the masculine forename “Harry”, which I consider to be a relatively popular name currently in the UK. Forenames will, according to Registry practice, normally be accepted as having distinctive character.<sup>14</sup> I consider the mark to be neither descriptive nor allusive of the opponent’s goods. It is not, however, highly unusual as an invented word would be. Therefore, I find the earlier mark to be inherently distinctive to no more than a medium degree for all the goods covered by the mark.

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<sup>14</sup> See guidance under “Single forenames on goods” in Part B of the examination guide of the Manual of trade marks practice.

## Likelihood of confusion

56. There is no simple formula for determining whether there is a likelihood of confusion. It is clear that I must make a global assessment of the competing factors (*Sabel* at [22]), keeping in mind the interdependency between them i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa (*Canon* at [17]). I must consider the various factors from the perspective of the average consumer, bearing in mind that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them he has retained in his mind (*Lloyd Schuhfabrik* at [26]).

57. There are two types of possible confusion: direct, where the average consumer mistakes one mark for the other, or indirect, where the average consumer recognises that the marks are different, but assumes that the goods and/or services are the responsibility of the same or connected undertakings. The distinction between these was explained by Mr Iain Purvis Q.C. (as he then was), sitting as the Appointed Person, in *L.A. Sugar Limited v Back Beat Inc*, Case BL-O/375/10. He said:

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

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

(a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right (“26 RED TESCO” would no doubt be such a case).

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as “LITE”, “EXPRESS”, “WORLDWIDE”, “MINI” etc.).

(c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension (“FAT FACE” to “BRAT FACE” for example).”

58. The above are examples only which are intended to be illustrative of the general approach. These examples are not exhaustive but provide helpful focus.

59. Earlier in this decision, I found that:

- The contested goods, with the exception of “*Vegetable preserves*” in Class 29, are identical, or at least highly similar, to the opponent’s goods;
- The average consumer who is a member of the general public will pay a low to medium degree of attention when choosing the goods, while the business consumer is likely to pay a higher degree of attention to the selection, but not to the highest degree.
- Both groups, whilst not ignoring aural considerations, will select the goods at issue by predominantly visual means;
- The competing trade marks are visually similar to no more than a medium degree; are aurally similar to a low degree when the contested mark is

voiced in its entirety, but to a high degree when only the “Harry’s” element is articulated; and are conceptually dissimilar;

- The earlier mark is inherently distinctive to no more than a medium degree.

60. Although the average consumer views the mark as a whole, case law also directs me to bear in mind the dominant and distinctive elements of the marks. While allowing that the average consumer is unlikely to see the marks side-by-side and will therefore be reliant on the imperfect picture of them they have kept in their mind, I consider it unlikely that they would mistake or recall one mark for the other. I find this even when used on identical goods, particularly bearing in mind the no more than medium degree of visual similarity between the marks, and the fact that the selection process of the goods at issue will be by predominantly visual means. Consequently, I do not consider there to be a likelihood of direct confusion.

61. Taking into account the previously outlined guidance of Mr Iain Purvis Q.C. (as he then was), in *L.A. Sugar*, I will now consider whether there might be a likelihood of indirect confusion.

62. In *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17, Mr James Mellor Q.C. (as he then was), as the Appointed Person, stressed that a finding of indirect confusion should not be made merely because the two marks share a common element. In this connection, he pointed out that it is not sufficient that a mark merely calls to mind another mark. This is mere association not indirect confusion.

63. In *Liverpool Gin Distillery Ltd and others v Sazerac Brands, LLC and others* [2021] EWCA Civ 1207, Lord Justice Arnold 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 (at [16]) that "a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion". Lord Justice Arnold added that there must be “a proper basis” for concluding that there is a likelihood of indirect confusion when there is no likelihood of direct confusion.

64. Keeping in mind the global assessment of the competing factors in my decision, and in particular that the earlier mark is only distinctive to no more than a medium degree, I do not consider that the common element, which would be generally recognised as a forename in the UK, is so striking that the average consumer would assume that no-one else but the brand owner would be using it as a trade mark. However, I acknowledge the opponent's submissions that the average consumer might believe "HARRY'S COUNTRY KITCHEN" to be a home-made or rustic product line of the "Harry" brand, and I accept that the additional elements included in the later mark, which lends it its conceptual identity, may be perceived by a not insignificant proportion of consumers in the way submitted by the opponent, and which would be consistent with a sub-brand or brand extension. Consequently, I consider there to be a likelihood of indirect confusion in relation to all goods for which I found identity/similarity.

65. The opposition under section 5(2)(b) succeeds in respect of the following goods:

Class 29

*Jellies, jams, compotes, jellies, jams, fruit preserves, compotes.*

Class 30

*Chocolate; chocolate products; flour and preparations made from cereals and/or rice and/or flour; bread, biscuits, cookies, cakes, pastry goods; honey, treacle; pizza; meat pies; snack foods made from cereal; snack foods made from wheat; snack foods made from granola; chicken roll; turkey roll; frozen dough; frozen pizzas; frozen cakes; frozen pastry stuffed with meat and/or poultry and/or fish and/or vegetables; frozen pies, frozen meat pies, fruit pies, pizza pies, apple pies, frozen pot pies, fresh pies, vegetable pies, pork pies, frozen pies containing meat, frozen pies containing fish, pies containing poultry, pies containing game, sweet pies, sausage rolls.*

**CONCLUSION**

66. The applicant has been partially successful. Subject to any successful appeal, the application by WD FF Limited may proceed to registration in respect of the following opposed goods:

Class 29

*Vegetable preserves.*

67. As the opposition was not directed against all of the applicant's goods in Classes 29 and 30, the application may proceed in respect of the remaining, unopposed goods in these classes. Further, the opposition did not extend to the goods and services in classes 9, 35 and 39, therefore the application will also proceed to registration in respect of these classes in their entirety.

68. To clarify, the application will proceed in respect of all goods and services in Classes 9, 35 and 39, as listed in Annex A, as well as the following goods in classes 29 and 30:

Class 29

*Meat, fish, poultry and game, smoked salmon, cheese, charcuterie, meat extracts, preserved, frozen, dried and cooked fruits and vegetables, eggs, milk, cheese, butter, yogurt and other milk products, oils and fats for food, frozen meat, frozen fish, frozen poultry, frozen game, bacon, barbecue ribs, beef, beef joint, beef mince, beef steak, roasting beef, black pudding, burgers, beef burgers, chicken burgers, chicken, chicken breast, chicken drumsticks, chicken kiev, chicken legs, chicken nuggets, chicken portions, roasting chicken, chicken thighs, chicken wings, cod, cod fillets, coley fillets, coley steaks, cooked meat, cooked meat slices, crab cakes, crustaceans, duck, aromatic crispy duck, whole stuffed duck, fish, fish cakes, fish fillets, fish fingers, gammon, gammon joint, gammon rounds, gammon steaks, goose breast joint, haddock, haddock fillets, ham, roast ham, cooked ham, kipper fillets, lamb, lamb chops, leg of lamb, lamb shanks, lamb steaks, lemon sole fillets, liver, lobster, mackerel fillets, lamb mince, meatballs, meat substitutes, pate, pheasant, pollock fillets, pork mince, beef mince, plaice fillets, pork, diced pork, pork chops, pork loin joint, pork steaks, poultry, prawns, salami, salmon, salmon fillets, sausages, pork*

*sausages, beef sausages, scampi, shellfish, shrimps, sea bass fillets, sole fillets, steak, stewing steak, three bird roast, trout fillets, tuna, tuna steak, turkey, turkey ham, turkey burgers, turkey breast, turkey nuggets, roasting turkey, whitefish fillets, whiting fillets, desserts with pork gelatin, frozen prepared meals containing fish in a sauce, meat, vegetable extracts, preserved, dried and cooked fruits and vegetables, extracts of vegetables, meat products, sausages, vegetable preserves, fruit desserts, yoghurt desserts, chilled desserts, dairy desserts, artificial milk based desserts, eggs, milk, dairy products, yoghurt, edible oils and fats, nuts and nut butters, pickles, tofu, food spreads, soups, nut paste, frozen vegetables, frozen fish, frozen fruits, frozen meat, frozen meat products, frozen potato products, frozen poultry, frozen prepared meals consisting primarily of meat and/or poultry and/or fish and/or vegetables, frozen shellfish, potato crisps and potato products (for food), prepared meals and constituents therefor, snack foods made from seeds, snack foods, vegan meat, vegetarian meat, vegan burgers, vegetarian burgers, vegan mince, vegan pate, vegan puree, vegetarian sausages, vegan sausages, vegan meat balls, vegetarian meat balls, vegetarian charcuterie, plant-based meat substitutes, soya patties, soya [prepared], soya bean products, vegetable protein for use as an additive to foods, tofu, tofu burger patties, prepared vegan and vegetarian products, namely, prepared meals consisting predominately of meat substitutes and/or vegetables and/or beans and/or nuts and/or pulses and/or grains, vegetable soup preparations, vegetarian extracts for cooking, vegetable juice concentrates for food, extracts of vegetables [juices] for cooking, processed fruits, fungi and vegetables (including nuts and pulses), preserved vegetables, dried vegetables, fruit snacks, savouries predominately consisting of or containing protein, including mycoprotein, ready-made meals, ready-made meals consisting of or containing protein, including mycoprotein, including those with vegetables, dietetic and slimming meals and food bars predominately containing protein, including mycoprotein, prepared frozen meals consisting of or containing protein, including mycoprotein, meat substitutes, vegetable based meat substitute.*

### Class 30

*Coffee, tea, cocoa, sugar, rice, tapioca, sago, couscous, coffee substitutes, coffee essences, coffee extracts, mixtures of coffee and chicory; confectionery, cheesecakes, edible ices; syrup, molasses; yeast, baking-powder; salt, mustard; vinegar, pepper, sauces, ketchup, salad sauces; spices; chutney; ices and ice lollies;*

*ice cream, water ices, frozen confections; preparations for making ice cream and/or water ices and/or frozen confections; breakfast cereals; pasta and pasta products; custard powder; mousses; puddings; mayonnaise; royal jelly for human consumption (other than for medicinal purposes); natural sweetener; prepared meals and constituents therefor, snack foods made from rice; snack foods made from maize; snack foods made from corn; snack foods made from potato flour; snack foods made from pasta; frozen ices; frozen confectionery; frozen custards; frozen lollipops; frozen pastry; frozen yoghurt confections; frozen dairy confections; ice desserts, prepared desserts, puddings for use as desserts; frozen yoghurt; sorbets; frozen prepared rice; sauces for frozen fish; herbs.*

## **COSTS**

69. The opponent has been predominantly successful, and is therefore entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice (“TPN”) 2/2016. I have made a very slight reduction to the costs to reflect the partial extent of the success. Applying the guidance in the TPN, I award the holder the sum of £600, which is calculated as follows:

Official fee:	£100
Preparing the notice of opposition and considering the counterstatement:	£200
Preparing and filing written submissions:	£300
<b>Total:</b>	<b>£600</b>

70. I therefore order WD FF Limited to pay Harry-Brot GmbH the sum of £600. 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 this 31st day of July 2023**

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

## **Annex A**

### **Applicant's goods and services**

#### Class 9

*Application software for the sale, order and delivery of food and drink; application software for the provision of information relating to food and drink; downloadable digital media featuring text, data, video and images relating to food and drink; downloadable electronic publications relating to food and drink.*

#### Class 29

*Meat, fish, poultry and game, smoked salmon, cheese, charcuterie, meat extracts, preserved, frozen, dried and cooked fruits and vegetables, jellies, jams, compotes, eggs, milk, cheese, butter, yogurt and other milk products, oils and fats for food, frozen meat, frozen fish, frozen poultry, frozen game, bacon, barbecue ribs, beef, beef joint, beef mince, beef steak, roasting beef, black pudding, burgers, beef burgers, chicken burgers, chicken, chicken breast, chicken drumsticks, chicken kiev, chicken legs, chicken nuggets, chicken portions, roasting chicken, chicken thighs, chicken wings, cod, cod fillets, coley fillets, coley steaks, cooked meat, cooked meat slices, crab cakes, crustaceans, duck, aromatic crispy duck, whole stuffed duck, fish, fish cakes, fish fillets, fish fingers, gammon, gammon joint, gammon rounds, gammon steaks, goose breast joint, haddock, haddock fillets, ham, roast ham, cooked ham, kipper fillets, lamb, lamb chops, leg of lamb, lamb shanks, lamb steaks, lemon sole fillets, liver, lobster, mackerel fillets, lamb mince, meatballs, meat substitutes, pate, pheasant, pollock fillets, pork mince, beef mince, plaice fillets, pork, diced pork, pork chops, pork loin joint, pork steaks, poultry, prawns, salami, salmon, salmon fillets, sausages, pork sausages, beef sausages, scampi, shellfish, shrimps, sea bass fillets, sole fillets, steak, stewing steak, three bird roast, trout fillets, tuna, tuna steak, turkey, turkey ham, turkey burgers, turkey breast, turkey nuggets, roasting turkey, whitefish fillets, whiting fillets, desserts with pork gelatin, frozen prepared meals containing fish in a sauce, meat, vegetable extracts, preserved, dried and cooked fruits and vegetables, extracts of vegetables, meat products, sausages, jellies, jams, fruit preserves, vegetable preserves, compotes, fruit desserts, yoghurt desserts, chilled*

*desserts, dairy desserts, artificial milk based desserts, eggs, milk, dairy products, yoghurt, edible oils and fats, nuts and nut butters, pickles, tofu, food spreads, soups, nut paste, frozen vegetables, frozen fish, frozen fruits, frozen meat, frozen meat products, frozen potato products, frozen poultry, frozen prepared meals consisting primarily of meat and/or poultry and/or fish and/or vegetables, frozen shellfish, potato crisps and potato products (for food), prepared meals and constituents therefor, snack foods made from seeds, snack foods, vegan meat, vegetarian meat, vegan burgers, vegetarian burgers, vegan mince, vegan pate, vegan puree, vegetarian sausages, vegan sausages, vegan meat balls, vegetarian meat balls, vegetarian charcuterie, plant-based meat substitutes, soya patties, soya [prepared], soya bean products, vegetable protein for use as an additive to foods, tofu, tofu burger patties, prepared vegan and vegetarian products, namely, prepared meals consisting predominately of meat substitutes and/or vegetables and/or beans and/or nuts and/or pulses and/or grains, vegetable soup preparations, vegetarian extracts for cooking, vegetable juice concentrates for food, extracts of vegetables [juices] for cooking, processed fruits, fungi and vegetables (including nuts and pulses), preserved vegetables, dried vegetables, fruit preserves, fruit snacks, savouries predominately consisting of or containing protein, including mycoprotein, ready-made meals, ready-made meals consisting of or containing protein, including mycoprotein, including those with vegetables, dietetic and slimming meals and food bars predominately containing protein, including mycoprotein, prepared frozen meals consisting of or containing protein, including mycoprotein, meat substitutes, vegetable based meat substitute.*

### Class 30

*Coffee, tea, cocoa, sugar, rice, tapioca, sago, couscous, coffee substitutes, coffee essences, coffee extracts, mixtures of coffee and chicory; chocolate; chocolate products; flour and preparations made from cereals and/or rice and/or flour; bread, biscuits, cookies, cakes, pastry goods, and confectionery, cheesecakes, edible ices; honey, treacle; syrup, molasses; yeast, baking-powder; salt, mustard; vinegar, pepper, sauces, ketchup, salad sauces; spices; chutney; ices and ice lollies; ice cream, water ices, frozen confections; preparations for making ice cream and/or water ices and/or frozen confections; breakfast cereals; pizza, pasta and pasta products; custard powder; mousses; puddings; meat pies; mayonnaise; royal jelly for human consumption (other than for medicinal purposes); natural sweetener; prepared meals*

*and constituents therefor, snack foods made from rice; snack foods made from cereal; snack foods made from wheat; snack foods made from maize; snack foods made from granola; snack foods made from corn; chicken roll; turkey roll; snack foods made from potato flour; snack foods made from pasta; frozen ices; frozen confectionery; frozen custards; frozen dough; frozen pizzas; frozen cakes; frozen lollipops; frozen pastry; frozen yoghurt confections; frozen dairy confections; ice desserts, prepared desserts, puddings for use as desserts; frozen yoghurt; sorbets; frozen prepared rice; sauces for frozen fish; frozen pastry stuffed with meat and/or poultry and/or fish and/or vegetables; herbs; frozen pies, frozen meat pies, fruit pies, pizza pies, apple pies, frozen pot pies, fresh pies, vegetable pies, pork pies, frozen pies containing meat, frozen pies containing fish, pies containing poultry, pies containing game, sweet pies, sausage rolls.*

### Class 35

*Retail services, wholesales services, retail stores services, mail order retail services, electronic or on-line retail services, supermarket and hypermarket services connected with the sale of food, meat, fish, poultry and game, smoked salmon, cheese, charcuterie, meat extracts, preserved, frozen, dried and cooked fruits and vegetables, jellies, jams, compotes, eggs, milk, cheese, butter, yogurt and other milk products, oils and fats for food, frozen meat, frozen fish, frozen poultry, frozen game, bacon, barbecue ribs, beef, beef joint, beef mince, beef steak, roasting beef, black pudding, burgers, beef burgers, chicken burgers, chicken, chicken breast, chicken drumsticks, chicken kiev, chicken legs, chicken nuggets, chicken portions, roasting chicken, chicken thighs, chicken wings, cod, cod fillets, coley fillets, coley steaks, cooked meat, cooked meat slices, crab cakes, crustaceans, duck, aromatic crispy duck, whole stuffed duck, fish, fish cakes, fish fillets, fish fingers, gammon, gammon joint, gammon rounds, gammon steaks, goose breast joint, haddock, haddock fillets, ham, roast ham, cooked ham, kipper fillets, lamb, lamb chops, leg of lamb, lamb shanks, lamb steaks, lemon sole fillets, liver, lobster, mackerel fillets, lamb mince, meatballs, meat substitutes, pate, pheasant, pollock fillets, pork mince, beef mince, plaice fillets, pork, diced pork, pork chops, pork loin joint, pork steaks, poultry, prawns, salami, salmon, salmon fillets, sausages, pork sausages, beef sausages, scampi, shellfish, shrimps, sea bass fillets, sole fillets, steak, stewing steak, three bird roast, trout fillets, tuna, tuna steak, turkey, turkey ham, turkey burgers, turkey breast, turkey nuggets, roasting*

turkey, whitefish fillets, whiting fillets, desserts with pork gelatin, frozen prepared meals containing fish in a sauce, meat, vegetable extracts, preserved, dried and cooked fruits and vegetables, extracts of vegetables, meat products, sausages, jellies, jams, fruit preserves, vegetable preserves, compotes, fruit desserts, yoghurt desserts, chilled desserts, dairy desserts, artificial milk based desserts, eggs, milk, dairy products, yoghurt, edible oils and fats, nuts and nut butters, pickles, tofu, food spreads, soups, nut paste, frozen vegetables, frozen fish, frozen fruits, frozen meat, frozen meat products, frozen potato products, frozen poultry, frozen prepared meals consisting primarily of meat and/or poultry and/or fish and/or vegetables, frozen shellfish, potato crisps and potato products (for food), prepared meals and constituents therefor, snack foods made from seeds, snack foods, vegan meat, vegetarian meat, vegan burgers, vegetarian burgers, vegan mince, vegan pate, vegan puree, vegetarian sausages, vegan sausages, vegan meat balls, vegetarian meat balls, vegetarian charcuterie, plant-based meat substitutes, soya patties, soya [prepared], soya bean products, vegetable protein for use as an additive to foods, tofu, tofu burger patties, prepared vegan and vegetarian products, namely, prepared meals consisting predominately of meat substitutes and/or vegetables and/or beans and/or nuts and/or pulses and/or grains, vegetable soup preparations, vegetarian extracts for cooking, vegetable juice concentrates for food, extracts of vegetables [juices] for cooking, processed fruits, fungi and vegetables (including nuts and pulses), preserved vegetables, dried vegetables, fruit preserves, fruit snacks, savouries predominately consisting of or containing protein, including mycoprotein, ready-made meals, ready-made meals consisting of or containing protein, including mycoprotein, including those with vegetables, dietetic and slimming meals and food bars predominately containing protein, including mycoprotein, prepared frozen meals consisting of or containing protein, including mycoprotein, meat substitutes, vegetable based meat substitute, beverages, tea, coffee, cocoa and artificial coffee, rice, pasta and noodles, tapioca and sago, couscous, flour and preparations made from cereals, bread, pastries and confectionery, chocolate, ice cream, sorbets and other edible ices, sugar, honey, treacle, yeast, baking-powder, salt, seasonings, spices, preserved herbs, vinegar, sauces and other condiments, ice (frozen water), chocolate products, flour and preparations made from cereals and/or rice and/or flour, bread, biscuits, cookies, cakes, pastry goods, cheesecakes, syrup, molasses, mustard, vinegar, pepper, sauces, ketchup, salad sauces, spices, chutney, ices and ice lollies, ice cream, water

*ices, frozen confections, preparations for making ice cream and/or water ices and/or frozen confections, breakfast cereals, pizza, pasta and pasta products, custard powder, mousses, puddings, meat pies, mayonnaise, royal jelly for human consumption (other than for medicinal purposes), natural sweetener, prepared meals and constituents therefor, snack foods made from rice, snack foods made from cereal, snack foods made from wheat, snack foods made from maize, snack foods made from granola, snack foods made from corn, chicken roll, turkey roll, snack foods made from potato flour, snack foods made from pasta, frozen ices, frozen confectionery, frozen custards, frozen dough, frozen pizzas, frozen cakes, frozen lollipops, frozen pastry, frozen yoghurt confections, frozen dairy confections, ice desserts, prepared desserts, puddings for use as desserts, frozen yoghurt, sorbets, frozen prepared rice, sauces for frozen fish, frozen pastry stuffed with meat and/or poultry and/or fish and/or vegetables, herbs, frozen pies, frozen meat pies, fruit pies, pizza pies, apple pies, frozen pot pies, fresh pies, vegetable pies, pork pies, frozen pies containing meat, frozen pies containing fish, pies containing poultry, pies containing game, sweet pies, sausage rolls, pastries consisting of vegetables and vegan meat, frozen pastry stuffed with vegan meat and vegetables, cakes, biscuits and desserts all being vegan, soya based cakes, biscuits and desserts, wheat protein, wheat flour, prepared frozen meals consisting primarily of flour, rice, pasta, or noodles which include protein, including mycoprotein, and vegetables, frozen yoghurt, sorbets, herbs, oatcakes, shortbread, fruit cake, chutneys, fruit vinegars, dressings for food, puddings, fresh fruits and vegetables, fresh herbs, beers, non-alcoholic beverages, mineral and aerated waters, fruit beverages and fruit juices, syrups and other non-alcoholic preparations for making beverages, alcoholic beverages, alcoholic preparations for making beverages; advertising services; marketing and promotional services; organisation, operation and supervision of sales and promotional incentive schemes and customer loyalty schemes; information, advisory and consultancy services all relating to the aforesaid services.*

### Class 39

*Transport, packaging, storage and delivery of food and drink; transport and delivery of food and drink ordered from an internet website or by means of telecommunications; food delivery services.*