

O/0904/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00004120864

BY COLONA SA

TO REGISTER THE TRADE MARK:



IN CLASSES 29 & 30

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 452686

BY HELLOFRESH SE

Background and pleadings

1. On 5 November 2024, Colona SA (“the applicant”) applied to register the trade mark shown on the cover page of this decision in the UK. The application was published for opposition purposes on 22 November 2024. Registration is sought for the following goods:

Class 29: Meat, fish, poultry and game; meat extracts; preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs; oils and fats for food; French fries.

Class 30: Rice, pasta and noodles; tapioca and sago; flour and preparations made from cereals; bread, pastries and confectionery; chocolate; sugar, honey, treacle; yeast, baking-powder; salt, seasonings, spices, preserved herbs; vinegar, sauces and other condiments.

2. The application was opposed by HelloFresh SE (“the opponent”) and is based upon section 5(2)(b) of the Trade Marks Act 1994 (“the Act”) against all of the applied for goods.

3. The opponent relies on the following International Registrations:

First earlier mark

WO1699908

Factor_

International Registration Date: 20 January 2022

Designation date: 20 January 2022

Date of Protection of the IR in the UK: 6 June 2023

Priority date: 29 July 2021

Second earlier mark

WO1699911

FACTOR_

Colours claimed: Black

International Registration Date: 20 January 2022

Designation date: 20 January 2022

Date of Protection of the IR in the UK: 13 June 2023

Priority date: 29 July 2021

Relying on some of the goods for which they are registered as follows:

Class 29: Meat, fish, poultry and game; meat substitutes; meat products; non-live fish, seafood and mollusks; meat extracts; preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs; milk and milk products; edible oils and fats; seafood and mollusks; crustaceans; sausages; pâtés; ham; antipasti salads, prepared salads; prepared dishes consisting primarily of meat, fish, poultry, game, seafood, potatoes, dairy products and their substitutes, nuts, eggs, broth and/or vegetables; dairy products and their substitutes; cheese; butter; crème fraîche; dairy-based dips; fresh cheese; dairy-based beverages; yogurt; herb butter; margarine; milk substitutes; sour cream; sheep cheese; whipped cream; soy milk; spreadable cheese; soft cheese; hard cheese; liquid egg; processed eggs; spreads [fat-based], nut-based spreads, vegetable-based spreads, spreads consisting essentially of fruits, spreads consisting essentially of eggs, milk-based spreads, dairy-based spreads; fish and seafood spreads, fruit and vegetable spreads; processed fruits and vegetables [including nuts, legumes] and processed mushrooms; processed vegetables; olive oil; canola oil for food purposes; vegetable-based chips; soups; stocks; soup cubes; ready-made soups; nut snacks; fruit snacks;

vegetable-based snacks; meat-based snacks; tofu-based snacks; assorted and/or pre-portioned combinations of the foregoing, whether or not in the form of pre-prepared meals; packaged meals; prepared meals consisting primarily of meat, fish, poultry or vegetables; prepared meals consisting primarily of eggs, meat, fish, eggs, poultry, meat substitutes and/or seafood; prepared meals consisting primarily of meat, fish, poultry, game, seafood, potatoes, dairy products and their substitutes, nuts, eggs, broth and/or vegetables; convenience food, cooked dishes consisting primarily of meat, fish, poultry, game, seafood, potatoes, dairy products and their substitutes, nuts, eggs, broth and/or vegetables; prepared meals consisting primarily of vegetables; desserts based on artificial milk; desserts made from dairy products.

Class 30: Savory snacks based on cereal grains, flour, sesame seeds, rice, pasta, desserts and/or confectionery; packaged food consisting primarily of rice with meat, fish or vegetables; packaged food consisting primarily of pasta with meat, fish or vegetables; rice-based prepared meals; prepared meals consisting mainly of rice; prepared meals in the form of pizzas; prepared meals containing mainly pasta; dry and liquid prepared meals consisting mainly of rice; dry and liquid prepared foods consisting mainly of pasta; coffee, tea, cocoa and coffee substitutes; rice; tapioca and sago; flours and cereal preparations; bread, pastry and confectionery; ice cream; sugar, honey, treacle; yeast, baking powder; salt; mustard; vinegar, sauces [condiments]; spices; chilled ice; processed cereals and starches for food and articles thereof, bakery preparations; pizza; snack products of cereals, rice or corn; pasta; prepared pasta dishes; dumplings; dough, batter and baking mixes therefor; popcorn; quiche; sandwiches; snack products made from cereals, sesame seeds, rice, pasta, desserts and/or confectionery; prepared meals based on cereals, sesame seeds, rice, pasta, desserts and/or confectionery; cereals; muesli; sushi; pasta; prepared pasta dishes; pastries; wraps [sandwich]; breakfast rolls; Packaged breakfast lunch with meat, fish, vegetables; Packaged breakfast lunch with breakfast cereals with a mixture of fruit and fiber; Packaged breakfast lunch of rice, porridge, breakfast cereals; breakfast cereals; snacks, namely cheese-based snacks, cereal-based snacks, rice-based snacks, whole grain-based snacks, corn-based snacks; cheese-based snacks; grain snacks; rice

snacks; whole grain-based snacks; corn-based snack foods; marinades; seasoning mixes; savory sauces, chutneys and pastes; ready-made sauces; ketchup; mayonnaise; pizza sauces; pasta sauces; salad dressings; chocolate; bakery desserts, namely, desserts based on wheat, semolina, starch and rice; desserts, primarily consisting of pasta, pudding desserts, ready-to-eat desserts [confectionery]; baked goods; candies; bread; crackers; pastries; cakes; pies; cookies; confectionery; candy bars; chewing gum; granola bars; chocolates; honey; natural sweetener; golden syrup; molasses; icings; frosting; marzipan; ice cream; frozen yogurt; sorbets; tea-based beverages; beverages made from coffee; beverages made from cocoa; tea bags; assembled and/or pre-portioned combinations of the aforementioned goods, also as already prepared meals; pre-packaged meals consisting of meat, poultry or vegetables; ready-to-eat meals made from the aforementioned foodstuffs; sweet spreads; chocolate spreads with nuts; chocolate spreads; cocoa spreads; cocoa-based cremes in the form of spreads; chocolate spreads with nuts; mayonnaise-based spreads.

4. The opponent claims that the marks are similar, that the respective goods are identical/similar and that there is consequently a likelihood of confusion.

5. The applicant filed a counterstatement denying the similarity between the marks but admitting that the goods were identical or similar.

6. The applicant is represented by Baron Warren Redfern LLP and the opponent is represented by Bird & Bird LLP. Neither party filed evidence nor requested a hearing. Both parties filed submissions in lieu. This decision is therefore taken following careful consideration of the papers.

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

Preliminary matter

8. Following receipt of the opponent's submissions in lieu, dated 26 November 2025, the applicant requested further time to respond. The request was made on the basis that the opponent had not previously filed submissions or evidence in the proceedings and that, in the applicant's view, it was equitable for it to have an opportunity to address the specific arguments advanced by the opponent. The request was granted. The opponent subsequently requested a case management conference to challenge that decision. At the case management conference, the Hearing Officer confirmed the earlier preliminary view and allowed the applicant a short period to respond to the opponent's submissions. The opponent was also given further time thereafter to file a response.

Decision

Section 5(2)(b)

9. Section 5(2)(b) of the Act is as follows:

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

(a) [...]

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

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

10. Section 5A of the Act states as follows:

“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.”

11. The opponent’s marks qualify as earlier marks, in accordance with section 6 of the Act. As the earlier marks have not been protected for five years or more before the date of application of the contested mark, they are not subject to proof of use requirements. Therefore, the opponent can rely upon all of the goods identified in its Form TM7.

Section 5(2)(b) case law

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

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

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

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

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

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may 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

13. 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”.

14. 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.

15. In *Gérard Meric v Office for Harmonisation in the Internal Market* (OHIM) ('Meric'), Case T-133/05, the General Court ("GC") stated that:

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

16. 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 (or services). 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”.

17. I note that the applicant has admitted that the goods at issue are identical or similar, but it has not explained which goods it considers identical or the degree of similarity between the remaining goods.

18. The following goods are identical across the specifications (either self-evidently or under the *Meric* principle):

Class 29: Meat, fish, poultry and game; meat extracts; preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs; oils and fats for food;

Class 30: Rice, pasta; tapioca and sago; flour and preparations made from cereals; bread, pastries and confectionery; chocolate; sugar, honey, treacle; yeast, baking-powder; salt, seasonings, spices; vinegar, sauces and other condiments.

19. I consider that ‘French fries’ from the applicant’s specification will fall within the opponent’s ‘preserved, frozen, dried and cooked fruits and vegetables’ and therefore, I find them to be identical under the *Meric* principle.

20. “Noodles” and “pasta” are both cereal-based staple food products. Although their precise ingredients, forms and culinary uses may differ, they overlap in nature and purpose, target the same consumers, pass through the same trade channels and may

be sold in close proximity in supermarkets. They may also be in competition. I therefore find them similar to at least a medium degree.

21. I consider that the applicant's 'preserved herbs' will have an overlap in consumers with the opponent's 'seasoning mixes'. They may also overlap in nature (as the mixes could contain preserved herbs within them). The purpose is the same – that is to provide seasoning/flavour whilst cooking. They are likely to overlap in trade channels, often dried or preserved herbs are found in similar areas to seasoning mixes within a supermarket. Although seasoning mixes may contain ingredients in addition to herbs, the goods could compete where the consumer chooses between a prepared blend and individual preserved herbs. They are not complementary. I therefore find these goods to be similar to a high degree.

Average consumer and the purchasing act

22. 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.

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

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

(b) The average consumer provides a standard which enables the courts to strike a balance between the competing interests involved, such as trade mark owners, their competitors and consumers;

(c) The average consumer is neither a single hypothetical person nor a mathematical average; assessment from the perspective of the average consumer does not involve a statistical test. There is no single meaning rule and if, having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, a finding of infringement may properly be made;

(d) Assessment from the perspective of the average consumer is intended to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by enabling courts and tribunals to determine such issues so far as possible without the need for evidence;

(e) The average consumer's level of attention varies according to the category of goods or services in question; and

(f) the average consumer rarely has the opportunity to make direct comparisons between trade marks (or between trade marks and signs) and must instead rely upon the imperfect picture of the trade mark they have kept in their mind.

24. The average consumer for the relevant goods is the general public. The purchasing act will be primarily visual because such goods will be selected after perusal of the goods in store or on a website. That is not to say, though, that the aural aspect should be ignored since the goods may also be the subject of oral recommendations or requests.

25. As regards the degree of attention, I consider that it would be lower than normal given that the goods are inexpensive and purchased very frequently. However, given that the goods will be consumed, I do not consider that the average consumer will pay the lowest level of attention. I consider that the average consumer will pay a degree of attention between low and medium.

Comparison of the marks

26. 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.”

27. 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.

28. I will carry out my comparisons of the contested mark against the first earlier mark. I will refer back to the second earlier mark later in the decision, as necessary. The respective trade marks are therefore shown as follows:

Contested mark	Earlier marks
	<i>First earlier mark</i> Factor_

29. The contested mark comprises the word 'Factory' which I consider to be the dominant and distinctive component. This is presented in a red typeface with yellow and white outlines. The word is presented over a device which is made up of a yellow circle with a red outline and details and a baker's or chef's hat which is also yellow with red details. The hat is allusive to the goods for which the mark is seeking protection for and will play a lesser role alongside the circle element and the stylisation.

30. The first earlier mark is a word mark which comprises the word 'Factor' followed by an underscore. I consider the word to be the dominant and distinctive element with the underscore playing a lesser role.

31. The visual overlap of the marks is 'Factor'. The earlier mark has an underscore immediately following the word and the contested mark has the extra letter 'Y' instead. The opponent states within its submissions that this is the "sole difference" between the verbal elements of the marks however, simply because I have found the device and stylisation of the contested mark to play a lesser role within the mark does not mean that they do not need to be considered at all.¹ I note that normal and fair use of a word mark includes use in upper and lower case letters and in a single colour other than the black in which the mark appears on the register. I do not consider that this assists the opponent much given the particular combination of colours, outlines and

¹ Opponent's written observations dated 24 April 2026, paragraph 10.

figurative elements in the contested mark. I therefore find the marks to be visually similar to a medium degree.

32. Turning next to the aural comparison, I note within the applicant's submissions that they admit the marks are aurally 'very similar' and that the opponent has responded that this means this no longer needs to be determined within this decision. I agree and therefore, I must consider the marks to be 'very similar' or, in other words, similar to a high degree.

33. The opponent claims that there is conceptual overlap between the marks due to their shared elements and goes further in its 'Written observations' document to say that "the relevant question is not whether the two words carry different dictionary definitions, but whether the marks create a sufficient conceptual link such that consumers familiar with the Earlier Marks will assume an economic connection...".² It goes on to say that the underscore in the earlier marks will suggest a missing letter and that the average consumer will mentally complete the word. It suggests that there are only two seven letter words in common English with the beginning 'FACTOR' and those are 'FACTORY' and 'FACTORS'. This will, it claims, mean there is a chance of "mentally supplying" the consumer with the word 'FACTORY'.

34. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer. This is highlighted in numerous judgments of the General Court and the CJEU including *Ruiz Picasso v OHIM*³. I do not believe that the average consumer will go through the series of analytical steps advanced by the opponent to reach a meaning, particularly when the word 'FACTOR' already has a dictionary definition (i.e. one of the elements that affects an event, decision, or situation). I do not consider that the underscore contributes to the conceptual meaning. Nor has the opponent provided any evidence supporting its assertion that an underscore indicates a missing letter, particularly when it appears at the end of a word.

35. Factory also has a dictionary meaning, and the average consumer is likely to think of a large building containing machines which make large quantities of goods. Where the marks are comprised of words which have clear everyday meanings which are different, simply containing the same letters does not create a conceptual link as the

² Paragraph 21

³ [2006] ECR I-643; [2006] E.T.M.R 29

opponent has suggested. The meanings of the marks as they are viewed by the average consumer are different and therefore, the marks are conceptually dissimilar.

Distinctive Character of the Earlier Mark

36. 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).”

37. 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/or services, ranging up to those with high inherent distinctive character, such as invented words which have no allusive qualities.

38. As I have found above, FACTOR is a dictionary term and it has no particular meaning in relation to the goods for which it is registered. I therefore find it to be inherently distinctive to a medium degree. I have not been provided with any evidence of use in order to consider whether this degree of distinctiveness has been enhanced.

Likelihood of Confusion

39. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the principle of interdependence, under which a lesser degree of similarity between the marks may be offset by a greater degree of similarity between the goods, and vice versa. It is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the goods and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

40. The following factors must be considered to determine if a likelihood of confusion can be established:

- I have found the marks to be visually similar to a medium degree and conceptually dissimilar and the applicant has admitted that the marks are aurally similar to a high degree/very similar.
- The contested mark comprises of the word 'Factory', being dominant and distinctive component, and the device and stylisation will play lesser roles in the overall impression.
- The first earlier mark is a word mark which comprises the word 'Factor' followed by an underscore. I consider the word to be the dominant and distinctive element with the underscore playing a lesser role.

- I consider that the average consumer is likely to be the general public. I have concluded that between low and medium degree of attention will be paid during the purchasing process. I have also found the purchasing process to be largely visual.
- I have found the goods to be identical (or similar to a medium and high degree).
- The earlier mark is inherently distinctive to a medium degree.

41. Whilst the levels of visual and aural similarities between the marks are relatively high, I note in *The Picasso Estate v OHIM*, Case C-361/04 P, the CJEU found that:

“20. By stating in paragraph 56 of the judgment under appeal that, where the meaning of at least one of the two signs at issue is clear and specific so that it can be grasped immediately by the relevant public, the conceptual differences observed between those signs may counteract the visual and phonetic similarities between them, and by subsequently holding that that applies in the present case, the Court of First Instance did not in any way err in law.”

42. I consider that both FACTOR and FACTORY are ordinary English words with clear and immediately graspable, but materially different, meanings. This conceptual difference will likely counteract the levels of visual and aural similarity even for consumers paying a low to medium degree of attention. I note that the opponent has commented that the identical beginnings of the marks would lead to a finding of confusion however, this is not always decisive. Even where the goods are identical, I consider that the visual and conceptual differences between the marks will not go unnoticed by the average consumer. Taking all of the above into account, I find there to be no likelihood of direct confusion.

43. I will therefore turn to look at indirect confusion. I take guidance from Mr Purvis in *L.A. Sugar Limited* where he stated:

“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”).

44. 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 an exhaustive definition.”⁴

45. The marks share the sequence FACTOR. However, FACTOR is not so strikingly distinctive that the average consumer would assume that only the opponent could use that sequence as part of a trade mark. The addition of the letter “Y”, together with the figurative elements and stylisation of the contested mark, produces a different word with a clear and materially different concept. I do not consider that the average consumer would perceive FACTORY as a sub-brand, variant or logical brand extension of FACTOR. Nor is there any other reason why the average consumer would view the marks as coming from the same undertaking or indicating the same or

⁴ Paragraph 12

related brands. At most, one mark may call the other to mind because of the shared letters. This is mere association and not indirect confusion.⁵ Therefore, I find there to be no likelihood of indirect confusion.

Conclusion

46. The opposition fails in its entirety, and the applicant's mark can therefore proceed to registration, subject to any successful appeal.

47. I consider that the second earlier mark would not put the opponent in a better position, and therefore, I will not consider it any further.

Costs

48. The applicant has been successful and is entitled to a contribution towards its costs. Awards of costs are governed by Annex A of Tribunal Practice Notice ("TPN") 1/2023. In accordance with that TPN, I award the applicant the sum of **£1000**, calculated as follows:

Considering the notice of opposition and preparing the counterstatement	£300
Preparing for and attending a hearing (CMC)	£350
Preparation of submissions	£350
Total	£1000

49. I order HelloFresh SE to pay Colona SA the sum of £1000. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

⁵ *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17

Dated this 30th day of September 2026

L Nicholas

For the Registrar