

O/0906/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00004096076
BY INFUSION INTERNATIONAL GENERAL TRADING CO. W.L.L
TO REGISTER:

SLIDER
Station

IN CLASS 43

AND

IN THE MATTER OF OPPOSITION THERETO
UNDER NO. OP000452763 BY
SK GLOBAL BRANDS LTD

Background and pleadings

1. On 5 September 2024, Infusion International General Trading Co. W.L.L. (“the applicant”) applied to register in the UK the trade mark shown on the cover page of this decision (“the applicant’s mark”). The application was accepted and published for opposition purposes on 29 November 2024 and registration is sought for the following services:

Class 43: Providing temporary accommodation; hire of temporary office and commercial premises and accommodation; providing food and drink; bar, café, canteen and restaurant services; fast food restaurant services; juice bar services; coffee shop services; coffee bar services; take-away food and drink services; café services; snack bar services; catering services; renting of catering and dining utensils, equipment and furniture; renting of utensils, equipment, and furniture for use in the preparation, storage, presentation and provision of food and drink; rental of office and commercial furniture; creche and nursery services; pet housing services; information, research, arrangement, advice and assistance relating to all the aforesaid; providing information and advice relating to food and drink.

2. On 27 February 2025, SK Global Brands Ltd (“the opponent”) filed an opposition opposing the application in full under section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opponent relies upon the following mark:

SLIDER STATION

UK registration no.UK00003523049

Filing date 16 August 2020; Registration date 4 December 2020

Relying on all goods and services, being:

Class 29: Meat, fish, poultry and game; potato crisps and chips, and snack foods; meat extracts; preserved, dried, fried, baked and cooked fruits and vegetables; jellies, jams; eggs, milk and milk products; edible oils and fats; burgers; vegetable burgers; hamburgers; crisps and chips, namely fruit and vegetable chips; potato crisps and chips containing maize; dips; cheese in the form of dips; olive oil;

cooking oils; corn oil; edible oils for glazing foodstuffs; edible oils for use in cooking foodstuffs; edible vegetable oils; maize oil; bacon; cheese; butter; potato chips; croquettes; fish fillets; foods prepared from fish; fruit salads; gherkins; ham; mushrooms, preserved; olives, preserved; onions, preserved; pickles; potato fritters; sausages; sausages in batter; yoghurt; onion rings; fries; sweet potato fries; coleslaw; chorizo; fruit desserts; dairy desserts; yoghurt desserts; dairy-based beverages; milk shakes; dairy produce; beans.

Class 43: Services for providing food and drink; temporary accommodation; café and coffee bar services; food and drink preparation services; food and drink takeaway services; restaurant services; fast-food restaurant services; canteens; self-service restaurant services; snack-bars; restaurant and bar services including kiosk and take-away; providing prepared meals; preparation of foodstuffs or meals for consumption on or off the premises.

3. By virtue of relying on section 5(2)(b) of the Act, the opponent submits that the marks are identical, the services are identical and the likelihood of direct confusion and indirect confusion “is both legally and commercially inevitable”.
4. The applicant filed a counterstatement denying that the applicant’s mark is visually and conceptually identical to the opponent’s mark and denying that the services covered by the respective marks are all identical or highly similar. Given this, the applicant submitted there would not be a likelihood of confusion or association between the parties.
5. The opponent is represented by Trademark Legal Ltd. The applicant is represented by Beck Greener LLP. Neither party filed evidence and no hearing was requested. The applicant filed written submissions in lieu of the same. This decision is taken following a careful perusal of the papers on file.
6. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying

assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

DECISION

Section 5(2)(b): legislation and case law

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

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

(a) ...

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

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

8. 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.”

9. 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.

10. The opponent's mark qualifies as an earlier trade mark under the above provisions. As the opponent's mark had not completed its registration process more than five years before the filing date of the applicant's mark, it is not subject to the use provisions pursuant to section 6A of the Act. Consequently, the opponent may rely on the goods and services highlighted in its notice of opposition without having to demonstrate genuine use.
11. The following standard summary of the principles applicable to the assessment of the likelihood of confusion was approved by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc & Anor*, [2025] UKSC 25:
- (a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;
 - (b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;
 - (c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;
 - (d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

- (e) nevertheless, the overall impression conveyed to the public by a composite trade mark may, in certain circumstances, be dominated by one or more of its components;
- (f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;
- (g) a lesser degree of similarity between the goods or services may be offset by a 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; and
- (k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of goods and services

12. The parties' goods and services are as follows:

The opponent's goods and services	The applicant's services
Class 29: Meat, fish, poultry and game; potato crisps and chips, and snack foods; meat extracts; preserved, dried, fried, baked and cooked fruits and vegetables; jellies, jams; eggs, milk and milk products; edible oils and fats; burgers; vegetable burgers; hamburgers; crisps and chips, namely fruit and vegetable chips; potato crisps and chips containing maize; dips; cheese in the form of dips; olive oil; cooking oils; corn oil; edible oils for glazing foodstuffs; edible oils for use in cooking foodstuffs; edible vegetable oils; maize oil; bacon; cheese; butter; potato chips; croquettes; fish fillets; foods prepared from fish; fruit salads; gherkins; ham; mushrooms, preserved; olives, preserved; onions, preserved; pickles; potato fritters; sausages; sausages in batter; yoghurt; onion rings; fries; sweet potato fries; coleslaw; chorizo; fruit desserts; dairy desserts; yoghurt desserts; dairy-based beverages; milk shakes; dairy produce; beans.	

Class 43: Services for providing food and drink; temporary accommodation; café and coffee bar services; food and drink preparation services; food and drink takeaway services; restaurant services; fast-food restaurant services; canteens; self-service restaurant services; snack-bars; restaurant and bar services including kiosk and take-away; providing prepared meals; preparation of foodstuffs or meals for consumption on or off the premises.	Class 43: Providing temporary accommodation; hire of temporary office and commercial premises and accommodation; providing food and drink; bar, café, canteen and restaurant services; fast food restaurant services; juice bar services; coffee shop services; coffee bar services; take-away food and drink services; café services; snack bar services; catering services; renting of catering and dining utensils, equipment and furniture; renting of utensils, equipment, and furniture for use in the preparation, storage, presentation and provision of food and drink; rental of office and commercial furniture; creche and nursery services; pet housing services; information, research, arrangement, advice and assistance relating to all the aforesaid; providing information and advice relating to food and drink.
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13. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account, as per *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc.*¹ where the Court of Justice of the European Union (“CJEU”) stated at paragraph 23 of its judgement:

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all

¹ Case C-39/97

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*, 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 v Hesse v Office for Harmonization in the Internal Market (Trade Marks and Designs) (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”.

17. In *Sanco SA v OHIM*, Case T-249/11, the GC indicated that goods and services may be regarded as ‘complementary’ and therefore similar to a degree in circumstances where the nature and purpose of the respective goods and services are very different, i.e. *chicken against transport services for chickens*. The purpose of examining whether there is a complementary relationship between goods/services is to assess whether the relevant public is liable to believe that the responsibility for the goods/services lies with the same undertaking or with economically connected undertakings. As Mr Daniel Alexander Q.C. noted as the Appointed Person in *Sandra Amelia Mary Elliot v LRC Holdings Limited*, BL O/255/13:

“It may well be the case that wine glasses are almost always used with wine – and are, on any normal view, complementary in that sense – but it does not follow that wine and glassware are similar goods for trade mark purposes.”

18. Whilst on the other hand:

“.....it is neither necessary nor sufficient for a finding of similarity that the goods in question must be used together or that they are sold together.”

19. I bear in mind that it is permissible to group the services together for the purposes of assessment: *Separode Trade Mark*.²
20. In the case of services, the terms used should not be interpreted widely, but confined to the core of the possible meanings attributable to the terms: *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev 1) [2024] UKSC 36*.
21. In making the following comparison, pursuant to section 60A of the Act, goods and services are not to be automatically regarded as being similar to each other on the ground that they appear in the same class, nor automatically regarded as dissimilar from each other on the ground that they appear in different classes. I also note that in *Unicorn Studio Inc v Veronese* [2024] EWHC 1098 (Ch), Iain Purvis KC, sitting as deputy High Court judge, stated that any finding of similarity (between goods and services) requires the exercise of common sense.³
22. The opponent submits that the services covered by the respective marks are identical. The opponent states that the opponent's mark is registered in class 43 covering services for providing food and drink, restaurant services, café services, takeaway services and related hospitality services. The opponent further submits that the applicant seeks registration of the contested mark in class 43 for the same or highly similar services and as a result, both marks would be encountered by the same category of consumers, within the same commercial context, leading to a direct and unavoidable likelihood of confusion under section 5(2)(b) of the Act.
23. The applicant denies that the services covered by the respective marks are all identical or highly similar. The applicant submits which services it considers to be dissimilar. Additionally, the applicant submits that as the opponent in its statement of grounds makes no mention of any alleged similarity between the opponent's class 29 goods and the applicant's class 43 services, it should be considered that the opponent accepts that the goods and services at issue are dissimilar.

² BL O/399/10

³ At [24].

24. I have given due consideration to the submissions of the parties and while I do not intend to discuss these in full, I do wish to point out that when considering the likelihood of confusion under section 5(2)(b) of the Act the assessment must be based, in fact, on the concept of 'notional and fair use' which involves carrying out the comparison of the goods based on the specifications before me, not the goods and services effectively provided by the parties.⁴

Providing temporary accommodation; hire of [...] temporary accommodation.

25. The opponent's class 43 specification includes the broad term "temporary accommodation" which is not limited in any way. Consequently, the above applied for services are all encompassed within the opponent's term "temporary accommodation" and are thus identical in accordance with the principles in *Meric*.

Hire of temporary office and commercial premises [...].

26. The closest comparable opponent's term to the above applicant's services is "temporary accommodation". "Accommodation" is defined as a place to stay or live.⁵ The opponent's service provides accommodation on a temporary basis, which could range from an overnight stay at a hotel but could also apply to the rental of an apartment whilst the occupant is engaged on a work placement away from their usual residence. The respective services overlap in nature and purpose in that both services aim to provide temporary real estate services to the user. The users may differ with individuals seeking temporary accommodation being members of the public, whereas consumers hiring temporary office and commercial premises are likely to be businesses and members of the public. The trade channels overlap with consumers obtaining temporary accommodation and hiring temporary office and commercial premises through estate agents. The services are not in competition and are not complementary. Overall, I find the services to be similar to at least a medium degree.

⁴ *O2 Holdings Limited, O2 (UK) Limited v Hutchison 3G UK Limited*, Case C-533/06 at [66] and *Compass Publishing BV v Compass Logistics Ltd* [2004] RPC 41 at [22]

⁵ Cambridge dictionary definition of accommodation.

Providing food and drink.

27. The above applied for services are self-evidently identical with the opponent's "services for providing food and drink".

Fast food restaurant services, Snack bar services; Take-away food and drink services.

28. The above applied for services are self-evidently identical with the opponent's "fast-food restaurant services", "snack-bars" and "food and drink takeaway services" respectively.

Coffee bar services; Café services.

29. The above applied for services are self-evidently identical with the opponent's "café and coffee bar services".

Renting of catering and dining utensils, equipment and furniture; Renting of utensils, equipment, and furniture for use in the preparation, storage, presentation and provision of food and drink.

30. The above applied for services include the rental of utensils, equipment and furniture for catering and dining purposes or for use in the preparation, storage, presentation and provision of food and drink. I find these services to be similar to the opponent's broad term "services for providing food and drink" which encompasses a broad range of activities/interests across a number of service industries and genres to provide food and drink to the consumer. The above services are rental services that involve utensils, equipment and furniture to provide food and drink and the opponent's services involve any services to provide food and drink. The purpose of the respective services overlaps in that the end purpose is to provide food and drink to the average consumer. However, the purpose of the opponent's service is to provide food and drink whereas the purpose of the above applicant's services is to provide the user with utensils, equipment and furniture which can be used to provide food and drink. The average consumer

of the applied for services and the opponent's services is likely to be a business or consumer who wishes to produce food and drink. The trade channels overlap with businesses such as catering companies, hospitality suppliers and event businesses frequently offering both catering services and the hiring of catering equipment and furniture. A member of the general public could use the same company to provide the food and drink as well as the utensils, equipment and furniture. There is no competition between the services. The services have a complementary relationship as the applicant's services are important for the provision of the opponent's "services for providing food and drink" services, meaning that the consumer may well conclude that the same undertaking is responsible for both services, particularly in event and catering contexts. The above applied for services can often be integrated with the provision of food and drink and therefore could be characterised as being part of the provision of food and drink offering. Overall, I find the services to be similar to a medium degree.

Bar, café, canteen and restaurant services.

31. The above applied for services are identical under the principle outlined in *Meric* with the opponent's "restaurant and bar services including kiosk and take-away", "canteens" and "café and coffee bar services".

Juice bar services; Coffee shop services; Catering services.

32. The opponent's class 43 specification includes the broad term "services for providing food and drink" which is not limited in any way. Consequently, the above applied for services are all encompassed within the opponent's term "services for providing food and drink" and are thus identical in accordance with the principle in *Meric*.

Pet housing services.

33. In the absence of submissions, I consider that pet housing services are a dedicated housing facility designed to provide pets, particularly cats and dogs, with a comfortable environment to live in when they are looking for new owners or when

their owners are away. The opponent's class 43 specification includes the broad term "temporary accommodation" which is not limited in any way. Consequently, the above applied for services are encompassed within the opponent's term "temporary accommodation" and are thus identical in accordance with the principles outlined in *Meric*.

34. If I am incorrect in this finding, I find the above applied for services to be similar to the opponent's "temporary accommodation". The nature of the services overlap as the applicant's services provides housing services to pets whereas the opponent's service provides temporary accommodation in general. The purpose of the respective services overlap in that the end purpose is to provide a place to stay. Additionally, the users of the services will overlap being members of the general public, albeit pet owners in relation to the applicant's services. However, pet owners may also seek temporary accommodation. Taking all of these factors into consideration, I find the services to be similar to a medium degree.

Creche and nursery services.

35. In the absence of submissions, I consider that creche and nursery services are dedicated spaces to care for, nurture and supervise children. The closest comparable term in the opponent's specification is "temporary accommodation". I do not consider this applicant's service to be a type of temporary accommodation as the children do not reside in the creche or nursery. The nature of *creche and nursery services* is different to that of "temporary accommodation". I consider that creche and nursery services are a dedicated services to care for, nurture and supervise children whereas "temporary accommodation" provides humans with a temporary place to stay or stay and live. Consequently, the purposes of the services differ. The users of the services will differ as the user of the above applicant's service is likely to be a parent or guardian rather than a member of the general public looking for somewhere to stay or live for a temporary amount of time. Consequently, the trade channels differ. The services are not in competition as creche and nursery services cannot be substituted for temporary accommodation for a human. Additionally, the services are not complementary. Taking all of these factors into consideration, I find the services to be dissimilar.

Rental of office and commercial furniture.

36. The applicant submits that the above applicant's services relate to rental services which are of a different nature and purpose to the opponent's services. The applicant submits that the above services relate to rental of physical goods and enable others to provide services, catering and food and drink, which is not reflected in any of the opponent's services. Additionally, the applicant submits that the end users of such services tend to be businesses, whereas the opponent's services are targeted at the general consuming public meaning there is no competition between the services. The applicant submits that the above applicant's services relate to a completely different industry to the opponent's services.

37. The closest comparable term in the opponent's specification to the above applicant's services is "temporary accommodation". The nature of these services differs with the applicant's above services being a furniture rental service and the opponent's service being a temporary accommodation service. The purpose of the services differs with the applicant's service providing furniture to equip office or commercial premises with the opponent's service providing a place to stay. The trade channels will differ as furniture rental providers do not ordinarily provide temporary accommodation services and temporary accommodation providers do not ordinarily rent office or commercial furniture. These services are not in competition or complementary. While the provision of furnished accommodation will include furniture, consumers would not think that rental of office and commercial furniture and temporary accommodation services are important/indispensable to the other and provided by the same undertaking. Overall, taking all of these factors into account, I find the services to be dissimilar.

Information, research, arrangement, advice and assistance relating to all the aforesaid.

38. I have found some of the above applicant's services to be similar to the opponent's services. For those applicant's services I have found to be similar, even though the provision of information, research, arrangement, advice and assistance in relation to those services is not the same as provision of the actual service to which it

relates, there is a clear complementary relationship which I consider would share the same, or a slightly lesser degree of similarity, to the level of similarity I have found for each of the above applicant's terms I have considered. For the above applicant's services I have found to be dissimilar, it follows that the information, research, arrangement, advice and assistance relating to those services is also dissimilar.

Providing information and advice relating to food and drink.

39. The opponent's class 43 specification includes the term "services for providing food and drink". The nature of the services differs slightly as the opponent's services provides the food and drink itself whereas the applicant's services provide information and advice relating to the food and drink, which could ultimately result in the provision of the food and drink itself. There will be an overlap in trade channels, although I do not find competition. The services may share the same users as if a consumer is planning an event with a catering service for example, advice would be an aspect of the service which one would expect to receive. However, the services could be offered by either the food provider itself or a third party. The services have a complementary relationship as the applicant's services are important for the provision of the opponent's "services for providing food and drink" services, meaning that the consumer may well conclude that the same undertaking is responsible for both services. Overall, I find the services to be similar to a medium degree.

Conclusion of goods and services comparison

40. Where there is no similarity of goods or services, there can be no likelihood of confusion in respect of oppositions brought under s5(2)(b) grounds.⁶ As a result, my findings above mean that the opposition fails in respect of the following services, being those that I have found dissimilar:

⁶ *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA

Class 43: Creche and nursery services; Rental of office and commercial furniture; Information, research, arrangement, advice and assistance relating to all the aforesaid.

The average consumer and the nature of the purchasing act

41. 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.

42. 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.

43. I have no submissions from either party as to who the average consumer for the goods and services at issue will be.

44. The average consumer for the overlapping services is likely to include members of the general public as well as businesses and professional users. The services will be selected after viewing information on signage on the high street, in promotional materials, on the internet or via catalogues or after receiving word-of-mouth recommendations. In my view, the visual component will dominate all methods of sale, although I do not discount an aural component playing a part. Given the range of services at issue, the price and frequency of purchase will vary depending on their nature and type. When purchasing the services, the average consumer is likely to consider the range of food and drink on offer, dietary requirements, reviews and suitability of accommodation, premises, equipment and furniture. Even though the average consumer will pay a different level of attention for different services, overall, when selecting the services at issue, the average consumer is likely to pay a medium degree of attention.

Comparison of marks

45. It is clear from *Sabel BV v Puma AG* (particularly paragraph 23)⁷ 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.

46. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

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

47. It would be wrong, therefore, to dissect the trade marks artificially, although it is necessary to take into account the distinctive and dominant components of the marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

48. The respective trade marks are shown below:

The opponent's mark	The applicant's mark
SLIDER STATION	

⁷ C-251/95

49. The opponent submits that the marks are identical in every respect – visually, phonetically and conceptually. The opponent states that there is no element of differentiation between the two marks.

50. In its counterstatement, the applicant denies that the marks are visually and conceptually identical. The applicant submits that the applicant's mark contains a highly distinctive and stylised representation of the word "station" which is the distinctive dominant element and the word "slider" is purely descriptive or of low distinctiveness for the class 43 services in the application.

Overall impression

51. The opponent's mark is a word only mark consisting of the words "SLIDER STATION" in a plain typeface. There are no other elements that contribute to the overall impression of the mark which lies equally across the mark.

52. The applicant's mark is a figurative mark consisting of the words "Slider Station". The word "Slider" is in a smaller black uppercase standard font placed above and to the right of the word "Station". The word "Station" is presented in a stylised typeface positioned diagonally. Despite the typeface, the word is easily identifiable as the word "Station".

Visual comparison

53. Visually, the opponent's mark and the applicant's mark overlap through the use of the two words "Slider Station". The marks differ in that the word "Station" is presented in a stylised typeface in the applicant's mark and placed diagonally below "SLIDER". I find the word "STATION" to be visually more prominent in the applicant's mark, however, the mark will still be seen as "SLIDER STATION". As a general rule, consumers tend to focus on the beginnings of marks,⁸ which is where the marks are identical. Overall, weighing up the differences against the

⁸ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

similarities, I am of the view that the marks at issue are visually similar to a high degree.

Aural comparison

54. The opponent's mark comprises the words "SLIDER STATION". Both words are ordinary English dictionary words and will be pronounced as such. The applicant's mark comprises the same words and will also be pronounced in the usual way. Consequently, I find the marks to be aurally identical.

Conceptual comparison

55. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer, as highlighted in numerous judgments of the GC and CJEU.⁹ The assessment must, therefore, be made from the point of view of the average consumer.

56. Both marks consist of the words "SLIDER STATION". These are both ordinary words that will be well-known to the average consumer. The applicant submits that the word "Slider" is purely descriptive or of low distinctiveness for the class 43 services in the application. I disagree that the word "Slider" is purely descriptive of the class 43 services in the application. The word "Slider" has several meanings including (1) a part on a machine, computer, etc. that is used to control something, for example the volume that something is played at, (2) a type of shoe, (3) a type of small sandwich, especially a small hamburger, served as a snack or at the start of a meal, (4) in baseball, a throw in which the ball moves towards or away from the batter as it reaches them.¹⁰ Additionally, the word "Station" has several meanings, some being (1) a building and the surrounding area where buses or trains stop for people to get on or off (2) a company that broadcasts radio or television programmes (3) a building or place used for a particular service or type of word such as a petrol, police or fire station (4) a place where scientific

⁹ *Ruiz Picasso v OHIM* [2006] e.c.r.-I-643; [2006] E.T.M.R 29

¹⁰ Cambridge dictionary definition for "Slider".

information about the natural world is collected.¹¹ In spite of the stylisation of the applicant's mark as presented, I consider that the average consumer would perceive the words "SLIDER STATION" in both marks as forming a unit, with the word "SLIDER" qualifying the word "STATION". I consider that whatever meaning the consumer allocates to each word in the applicant's mark they will allocate the same meaning to the respective words in the opponent's mark and vice versa. Given this, I find that there are no points of conceptual difference and therefore conclude that the marks to be conceptually identical.

Distinctive character of the opponent's mark

57. 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)."

¹¹ Part of Cambridge dictionary definition for "Station".

58. Registered trade marks possess varying degrees of inherent distinctive character.

The distinctiveness of a mark can be enhanced by virtue of the use that has been made of it. However, the opponent has not pleaded that its mark has obtained an enhanced level of distinctiveness and no evidence has been filed to that effect. Therefore, I only have the inherent position to consider.

59. As set out above, the opponent's mark is a word only mark that consists of two words "SLIDER STATION". Both words are ordinary dictionary words which have several different meanings. However, when placing the words together, and in relation to the goods and food-related services for which the mark is registered, I consider that a significant proportion of consumers will understand them or associate them with a place to purchase sandwich/hamburger sliders. As such, the mark is strongly allusive of such services. Taking all of this into consideration, I am of the view that the inherent distinctiveness of the opponent's mark is between a low and medium degree for the goods and food related services for which the mark is registered. In relation to the non-food related services, I am of the view that the inherent distinctiveness of the opponent's marks is a medium degree as the mark is not allusive of the services.

Likelihood of confusion

60. 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 and services down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the opponent's mark, the average consumer for the goods and services 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 they have retained in their mind.

61. Whilst conducting a global assessment of the likelihood of confusion I must be aware of the fact that not all aspects of the respective marks will necessarily have the same impact. For example, the importance of the respective visual, aural and conceptual aspects will be dependent on factors such as the way the goods and services at issue are marketed, and in which type of store/platform they are made available.

62. Throughout the course of this decision, I have found that the respective goods and services to range from being identical to similar to a medium degree. The average consumers are members of the general public as well as businesses and professional users. The average consumers will select the goods and services via primarily visual means, although I do not discount an aural component. I have concluded that, the average consumer when selecting the goods and services at issue, is likely to pay a medium degree of attention. I have found the marks to be visually similar to a high degree, and aurally and conceptually identical. I have found the opponent's mark to possess between a low and medium degree of inherent distinctive character for the goods and food related services and a medium degree of inherent distinctive character for the non-food related services.

63. Taking all of these factors into account and bearing in mind the principle of imperfect recollection, I consider the present case represents an example of direct confusion. I base this finding primarily in reliance upon the high degree of visual, aural and conceptual similarity between the marks. I consider that the consumer would attempt to pin their recollection of the marks on the words 'Slider Station' and, as such, the presentational differences of the word "Station" in the applicant's mark will be misremembered. I consider that consumers will misremember which mark offered goods/services by 'SLIDER STATION' as opposed to 'SLIDER STATION' with the stylised "STATION", and vice versa, especially in light of the principle of imperfect recollection and the fact that consumers rarely have the opportunity to compare marks side by side. Ultimately, the shared use of 'SLIDER

STATION' (regardless of how it is presented) will lead to consumers mistaking one mark for the other. As a result, I consider that there exists a likelihood of direct confusion between the marks. Given the levels of similarity between the marks at issue, I find that this applies regardless of the degree of similarity between the goods and services at issue or level of attention paid.

64. In the event that I am incorrect about direct confusion, I will now consider whether there is a likelihood of indirect confusion. In *L.A. Sugar Limited v By Back Beat Inc*, BL O/375/10, Mr Iain Purvis Q.C. (as he then was) sitting as the Appointed Person, explained that:

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

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

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

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

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

65. It is not sufficient that a mark merely calls to mind another mark: *Duebros Limited v Heirler Cenovis GmbH*.¹² This is mere association not indirect confusion.

66. I remind myself that when considering indirect confusion, it is not simply the case that all points of difference will be noticed. Instead, it may be the case that some differences are noticed whereas others may not. In the present case, I consider that given its role in the overall impression of the applicant's mark, the consumer is likely to notice the stylisation elements of the word "Station". I consider that where consumers notice these stylistic differences, they will conclude that the marks are alternative marks used by the same undertaking. For example, consumers may think that the word only mark may be that used in promotional material whereas the figurative mark may be that used on packaging. As a result, I consider there to be a likelihood of indirect confusion. Again, given the level of similarity between the marks, I find that this applies to all of the services for which a degree of similarity was found.

CONCLUSION

67. The opposition succeeds in respect of all the services that I have found to be identical or similar. Therefore, the applicant's mark is, subject to any successful appeal of my decision, refused registration for the following:

Class 43: Providing temporary accommodation; Hire of [...] temporary accommodation; Hire of temporary office and commercial premises [...]; Providing food and drink; Fast food restaurant services, Snack bar services; Take-away food

¹² BL O/547/17

and drink services; Coffee bar services; Café services; Renting of catering and dining utensils, equipment and furniture; Renting of utensils, equipment, and furniture for use in the preparation, storage, presentation and provision of food and drink; Bar, café, canteen and restaurant services; Juice bar services; Coffee shop services; Catering services; Pet housing services; Information, research, arrangement, advice and assistance relating to all the aforesaid; Providing information and advice relating to food and drink.

68. That being said, the applicant's mark may proceed to registration (again, subject to any successful appeal of my decision) for the following services for which the opposition has failed:

Class 43: Creche and nursery services; Rental of office and commercial furniture; Information, research, arrangement, advice and assistance relating to all the aforesaid.

COSTS

69. Although both parties have achieved a measure of success in these proceedings. on balance, I consider the opponent has enjoyed the greater degree of success. Therefore I consider that the opponent is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 1/2023. Given the applicant has succeeded in registering some of their services, I consider it appropriate to reduce the costs award to a degree in order to reflect the applicant's success.

70. In the circumstances, I award the opponent the sum of £300 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Official fee:	£100
Preparing a statement and considering the other side's statement:	£250
Reduction:	-£50
Total:	£300

71.I therefore order Infusion International General Trading Co. W.L.L. to pay SK Global Brands Ltd the sum of £300. The above sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 30th day of September 2026

**N Barratt
For the Registrar**