O/1171/23

TRADE MARKS ACT 1994

IN THE MATTER OF
TRADE MARK APPLICATION NO. UK3770183
IN THE NAME OF THE SOCIETY OF VINTNERS LTD.
TO REGISTER AS A TRADE MARK

Just The Ticket

IN CLASS 33

AND

IN THE MATTER OF OPPOSITION THERETO
UNDER NUMBER 434784
BY PAUL SAPIN S.A.S.

BACKGROUND AND PLEADINGS

1. On 25 March 2022, The Society of Vintners Ltd. ("the applicant") applied to register the trade mark "**Just The Ticket**" in the United Kingdom. The application was accepted and published for opposition purposes on 8 April 2022, in respect of the following goods:

Class 33: *Wines; Sparkling wines; Rose wines; Fortified wines; Red wines; White wines; Table wines; Alcoholic wines.*

2. The application is opposed by Paul Sapin S.A.S. ("the opponent"). The opposition was filed on 5 July 2022 and is based upon Section 5(2)(b)[1] of the Trade Marks Act 1994 ("the Act"). The opposition is directed against all of the goods in the application. The opponent relies upon the following mark:

JUST
UK trade mark registration number 917979781
Filing date: 2 November 2018
Registration date: 15 February 2019
Registered in Class 32. Relying on all goods, namely, *Alcohol free wine*.

3. Under Article 54 of the Withdrawal Agreement between the UK and the EU, the UK IPO created comparable UK trade marks for all right holders with an existing registered EUTM or International Trade Mark designating the EU. As a result, the opponent's mark was converted into a comparable UK trade mark. Comparable UK marks are now recorded in the UK trade mark register, have the same legal status as if they had been applied for and registered under UK law, and the original filing dates remain the same.[2]

[1] I note that in an email to the Registry dated 29 December 2022, the opponent confirmed that it had elected not to file evidence in chief. As such, the grounds of opposition under section 5(3) as originally filed were struck out, as confirmed by the Registry in the official letter dated 27 June 2023. Therefore, the opposition is maintained under section 5(2)(b) only.
[2] See also Tribunal Practice Notice ("TPN") 2/2020 End of Transition Period – impact on tribunal proceedings.

4. The above mark qualifies as an earlier mark under section 6(1) of the Act. As it has not completed its registration procedure more than five years before the application date for the contested mark, it is not subject to the use provisions contained in section 6A of the Act.

5. The opponent submits that the first element "JUST" in the competing marks is identical and that the goods are identical and highly similar. It submits that there is a clear likelihood of confusion either directly or by way of association as to origin.

6. The applicant filed a counterstatement denying the claims and submits that there is insufficient similarity between the marks and the goods for there to be any likelihood of confusion.

7. Only the applicant elected to file evidence of fact; the opponent filed evidence in reply. Both parties filed written submissions in lieu of a hearing, which will be referred to as and where appropriate during this decision. 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 Lane IP Limited and the applicant is represented by Forresters IP LLP[3].

EVIDENCE

The applicant's evidence

9. The applicant filed evidence in support of the defence in the form of the witness statement of Janette Hamer dated 3 March 2023, which is accompanied by four exhibits, labelled Exhibit JCH1 to Exhibit JCH4. Ms Hamer is a chartered trade mark attorney and partner at Forresters IP LLP, being the appointed representatives of the applicant, a position which she has held since April 2018.

[3] Form TM33 appointing Forresters IP LLP as representatives to the applicant was filed on 21 July 2022, the details of which have been recorded accordingly in these proceedings.

The opponent's evidence in reply

10. The opponent filed evidence in reply in the form of the witness statement of Mark Hickey dated 28 April 2023, which is accompanied by six exhibits, labelled ANNEX MH 0 to ANNEX MH 5. Mr Hickey is a chartered trade mark attorney and a partner of Lane IP Limited, being the appointed representatives of the opponent.

11. I have taken the evidence into account in reaching my decision and I will refer to the relevant parts at the appropriate points in the decision to the extent I consider necessary.

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 read 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".

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. 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

16. 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.

17. 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".[4]

18. 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 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".[5]

19. 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 users and the channels of trade of the respective goods or services.

20. For the purposes of considering the issue of similarity of the goods, it is permissible to consider groups of terms collectively where appropriate: *Separode Trade Mark*, BL O-399-10.[6]

21. The opponent is relying on goods in class 32, being *"Alcohol free wine"*. The opposed goods are "*Wines; Sparkling wines; Rose wines; Fortified wines; Red wines; White wines; Table wines; Alcoholic wines*" in class 33.

[4] Paragraph 29
[5] Paragraph 23
[6] Paragraph 5

22. The opposed goods are all encompassed by the broad term "wines". There will be an overlap in the intended purpose of the applicant's "*Wines; Sparkling wines; Rose wines; Fortified wines; Red wines; White wines; Table wines; Alcoholic wines"* in class 33 with the opponents *""Alcohol free wine"* in class 32, inasmuch that the purpose of both is as a liquid refreshment. The goods share the same method of use, i.e. oral consumption, and they share the same channels of trade where they are likely to be positioned in close proximity, although not necessarily side by side. Although I do not consider them to be complementary, the respective goods may be targeted towards the same end user. As such, there is an element of competition between the goods, with the consumer making an informed choice between alcoholic wine or an alternative alcohol-free wine. I do not consider it unreasonable that the average consumer would expect the same or economically linked undertakings to produce wines that are both non-alcoholic as well as wines that contain alcoholic content. Taking all of the above into account, I consider the applicant's "*Wines; Sparkling wines; Rose wines; Fortified wines; Red wines; White wines; Table wines; Alcoholic wines"* to be similar to at least a medium degree to the opponent's *"Alcohol free wine".*

The average consumer and the nature of the purchasing act

23. The average consumer is a legal construct, deemed to be reasonably well informed and reasonably circumspect: see *Hearst Holdings Inc & Anor v A.V.E.L.A. Inc & Ors*, [2014] EWHC 439 (Ch), paragraph 60. 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, at [26].

24. The goods at issue are both alcoholic and alcoholic-free wine. Insofar as the alcoholic drinks are concerned, the average consumer will be the adult (over 18) member of the general public, and will include connoisseurs alongside 'pleasure drinkers' whose knowledge will be more rudimentary. Both alcoholic and alcoholic-free wine may be purchased for consumption at home or in a social setting such as a bar or restaurant. I further consider that the goods will also be purchased by buyers for venues such as public bars and restaurants.

25. The goods are sold through a range of channels including wholesale outlets and retail outlets such as supermarkets and off-licences, as well as through specialist suppliers and online. In bricks and mortar stores, the goods will be sold on shelves where they will be viewed and self-selected by the consumer. A similar process will apply to websites, where the consumer will select the goods having viewed an image displayed on a webpage. The goods will also be sold in restaurants, bars and public houses, where they are likely to be displayed behind the counter or listed on a drinks menu. Considered overall, the selection process is predominantly visual, although I do not discount aural considerations, particularly in bars and restaurants, where the goods may also be selected and requested verbally. I bear in mind the comments of the GC in *Simonds Farsons Cisk plc v OHIM*, Case T-3/04, who said:

> "58. In that respect, as OHIM quite rightly observes, it must be noted that, even if bars and restaurants are not negligible distribution channels for the applicant's goods, the bottles are generally displayed on shelves behind the counter in such a way that consumers are also able to inspect them visually. That is why, even if it is possible that the goods in question may also be sold by ordering them orally, that method cannot be regarded as their usual marketing channel. In addition, even though consumers can order a beverage without having examined those shelves in advance they are, in any event, in a position to make a visual inspection of the bottle which is served to them."

26. The value of the goods, which are not considered to be an everyday purchase, but are likely to be purchased on a semi-regular basis by the general public, will vary in price, and will include expensive vintage wines which may give rise to an elevated degree of attention being paid, but are generally considered to be relatively inexpensive. Overall, I consider that the average consumer will pay a medium level of attention during the selection process of both alcoholic and alcohol-free wines, basing their selection on the type of beverage and personal taste, as well as the cost of the product and the occasion for which it is being purchased.

Comparison of marks

27. 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."[7]

28. 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.

29. The applicant's mark comprises the words "**Just The Ticket**", presented in a standard typeface in sentence case, with no other elements to contribute to the overall impression.

30. The opponent's mark consists of a single word, "**JUST**", presented in a standard typeface in capital letters, with no other elements to contribute to the overall impression.

31. The overall impression of each mark therefore rests in the word or combination of words that make up the respective marks. I note that the registration of a word mark gives protection irrespective of capitalisation (see *Bentley Motors Limited v Bentley 1962 Limited*, BL O/158/17). 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

[7] Paragraph 34

differences between marks of different lengths will be more easily grasped by the average consumer.[8] Meanwhile, 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 acknowledge that this is not always the case.

Visual comparison

32. The applicant's mark consists of three words, compared with only one word in the opponent's mark, which contributes to a visual disparity between the marks. The marks share in common the word "JUST", which is positioned at the start of the contested mark. Considering both the position of the word in common, as well as the length of the respective marks, I consider the marks to be visually similar to a low to medium degree.

Aural comparison

33. The common element to both marks is the word "JUST", which will be pronounced identically in both marks, as one syllable, whereas the contested mark will be voiced in its entirety as four syllables, JUST-THE-TICK-IT. Overall, I consider the marks to be aurally similar to a low to medium degree.

Conceptual comparison

34. With regard to conceptual comparison, in *Luciano Sandrone v European Union Intellectual Property Office (EUIPO)*, Case T-268/18, the GC held:

> "… In that regard, it must be borne in mind that the purpose of the conceptual comparison is to compare the 'concepts' that the signs at issue convey. The term 'concept' means, according to the definition given, for example, by the Larousse dictionary, a 'general and abstract idea used to denote a specific or abstract thought which enables a person to associate with that thought the

[8] At [42].

various perceptions which that person has of it and to organise knowledge about it."[9]

35. I consider that the average consumer would recognise the common, dictionary defined word "JUST" as meaning "only" or "simply", although I acknowledge that the word has various meanings and may be interpreted differently according to the context. However, in this instance, I consider that the consumer would perceive the mark as being 'just' alcohol-free wine, i.e. nothing more, nothing less.

36. I consider that the words which make up the applicant's mark form a unit, with one specific meaning: *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch)[10]. The phrase "just the ticket" is dictionary defined,[11] and, as submitted by applicant, means that something "is exactly what is needed".[12] As such, the word "Just" would not be taken in isolation. The message conveyed by the mark as a whole is therefore different to the message conveyed by the opponent's mark.

37. Overall, I consider that the average consumer, being reasonably well informed and reasonably circumspect, will be able to differentiate between the distinct concepts of the competing marks. Accordingly, I find the marks to be conceptually dissimilar.

Distinctive character of the earlier marks

38. 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.

39. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the CJEU stated that:

[9] Paragraph 8.
[10] Paragraphs 18 – 21.
[11] Sourced from the Collins dictionary online on 28 November 2023.
[12] See paragraph 27 of the applicant's written submissions in lieu of a hearing, dated 25 July 2023.

> "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 *WindsurfingChiemsee* v *Huber and Attenberger* [1999] ECR I-0000, paragraph 49).
>
> 23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51)."

40. The applicant contends that the earlier mark has a low degree of distinctive character, and refers to its Exhibit JCH3 which shows examples of UK trade mark registrations consisting or containing the term "JUST" in connection with class 33 goods.[13] However, I agree with the opponent that this has no bearing on my assessment: *Zero Industry Srl v OHIM*, Case T-400/06.[14] I must also agree with the opponent that the applicant's evidence by way of Exhibit JCH4, which shows the results of a Google search for "JUST & wine UK", is limited. In my view, the evidence does not indicate to any extent the use of "JUST" as a trade mark in relation to wines. Neither does it show that the word "JUST" has become customary in trade for the goods at hand.

[13] See paragraph 7 of the witness statement of Janette Hamer; and paragraphs 31-33 of the applicant's written submissions in lieu of a hearing, dated 25 July 2023.
[14] At [73}.

41. 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 while evidence has been filed which shows details of the opponent's range of "JUST" wines, these do not seem to include alcohol-free wines.[15] I do not consider that the opponent has provided any evidence of use of the mark in relation to the goods at issue to demonstrate enhanced distinctiveness through use of the mark in the United Kingdom. Therefore, I only have the inherent characteristics of the mark to consider.

42. As described earlier in this decision, the earlier mark comprises the single word "JUST". While the word cannot be said to be descriptive of the goods at issue, I consider that to a significant proportion of consumers, when considered within the context of the goods, the mark would be seen as alluding to those goods as simply being alcohol-free wines ("JUST" alcohol-free wine). Consequently, I consider the mark to be at the lower end of the spectrum of inherent distinctive character, but not of the very lowest degree.

Likelihood of confusion

43. 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]).

[15] See point 3 of the witness statement of Mark Hickey and the accompanying ANNEX MH 0.

44. 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)."

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

46. Earlier in this decision, I found the competing goods to be similar to at least a medium degree, with the average consumer paying a medium level of attention during the selection of those goods, which would be selected by predominantly visual means. I found the competing trade marks to be visually and aurally similar to a low to medium degree, and to be conceptually dissimilar. I considered the earlier mark to be at the lower end of the spectrum of inherent distinctive character, but not of the very lowest degree.

47. As outlined above, I consider the marks to be conceptually dissimilar. While it is not always the case, in some circumstances, conceptual differences may be enough to offset visual and aural similarities: *The Picasso Estate v OHIM*, Case C-361/04 P. I also bear in mind the decision of the CJEU in *L'Oréal SA v OHIM*, Case C-235/05 P, in which the court confirmed that weak distinctive character of the earlier trade mark does not automatically preclude a likelihood of confusion.

48. 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 one mark for the other. In my view, given the low to medium degree of visual and aural similarity between the marks, coupled with the conceptual dissimilarity, I consider that the average consumer will notice and recall the differences between the marks. I also take into account the low degree of inherent distinctive character of the earlier mark, as well as the medium level of attention paid during the selection process, notwithstanding the degree of similarity between the goods at issue. Overall, I do not consider there to be any likelihood of direct confusion.

49. 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. 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.

50. Keeping in mind the global assessment of the competing factors in my decision, it is my view that it is unlikely that the average consumer would assume that there is a connection between the parties. I consider this to be the case even though the word "JUST" of the earlier mark is wholly incorporated in the later mark, given that the point of similarity resides in an element which does not play an independent role in the later mark. I acknowledge that the categories listed by Mr Iain Purvis Q.C. (as he then was) are not exhaustive, however, I do not see anything which would lead the average consumer into believing that one mark is a sub-brand or brand extension of the other, or assume that there is an economic connection between the undertakings. I therefore find no likelihood of indirect confusion.

CONCLUSION

51. The opposition under section 5(2)(b) fails. Subject to any successful appeal, the application by The Society of Vintners Ltd. may proceed to registration in respect of all goods.

COSTS

52. The applicant has been successful, and is therefore entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice ("TPN") 2/2016. As the evidence submitted by the applicant in support of its application largely concerned the applicant's intention to adapt the contested mark as part of its "…the ticket" range, and examples of third party marks which contain the word "just", neither

of which had any bearing on my assessment,[16] I make no award for that evidence. Applying the guidance in the TPN, I award the applicant the sum of £500, which is calculated as follows:

Considering the notice of opposition and preparing a counterstatement:	£200
Preparing written submissions in lieu of a hearing:	£300
Total:	**£500**

53. I therefore order Paul Sapin S.A.S. to pay The Society of Vintners Ltd. the sum of £500. 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 12th day of December 2023

Suzanne Hitchings
For the Registrar,
the Comptroller-General

[16] See paragraph 40 of this decision.