

O-243-16

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 3131635 BY
MR GOKULAVANNAN PARAMANATHAN**

TO REGISTER:



AS A TRADE MARK

IN CLASS 30

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 60000393 BY
AKTIEBOLAGET ANNAS PEPPARKAKOR**

BACKGROUND

1. On 15 October 2015, Mr Gokulavannan Paramanathan (“the applicant”) applied to register the trade mark shown on the cover page of this decision. The application was published for opposition purposes on 13 November 2015, for the following goods in class 30:

Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, ices; honey, treacle; yeast, baking-powder; salt, mustard; vinegar, sauces (condiments); spices; ice; sandwiches; prepared meals; pizzas, pies and pasta dishes.

2. The application is opposed in full by Aktiebolaget Annas Pepparkakor (“the opponent”) under the fast track opposition procedure. The opposition is based upon section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The trade mark and goods relied upon are shown below:

European Union Trade Mark (“EUTM”) no. 12730016 for the trade mark: **ANNAS** which was applied for on 26 March 2014 and for which the registration procedure was completed on 21 August 2014:

Class 30 - Biscuits; Gingerbread biscuits; cakes; confectionery; cookies; (industrial) pastry; speculoos (caramelized biscuits); spreads on the basis of cookies, speculoos (caramelized biscuits), coffee or chocolate paste.

3. In its Notice of Opposition, the opponent stated:

“3. [The competing trade marks] are comprised of four and five letters respectively and follow the same rhythmic and syllabic patterns. Both have two syllables, and begin with “A” and have the letter “A” as the fourth letter. Both have duplicate letters in the middle. The contested mark has two letter “M’s” in the middle and the earlier mark has two letter “N’s” in the middle. These letters are phonetically very similar and often confused with each other verbally. The stylisation of the contested mark amounts to just a simple font and block colouring, and is not sufficient to distinguish it and remove similarity with the earlier mark. Furthermore, the stylisation of the middle “M’s” within the contested mark could lead some consumers when viewing the mark to think that those letters are in fact “N’s” therefore bringing the mark closer to the earlier mark. From a visual and phonetic point of view, the marks are highly similar.

4. Both the contested and earlier marks are female names. The only minor variation being that the earlier mark adds an “S”, therefore referring to the fact that something belongs to ANNA. There is therefore conceptual similarity between [the competing trade marks]. Overall there is a high level of similarity...”

The opponent argues that the competing goods are in some instances identical and in others at least similar.

4. The applicant filed a counterstatement in which he denies the basis of the opposition. As these are the only comments I have from the applicant, they are reproduced below in full.

“I disagree with the statement made. Both ANNAS and my product name AmmA are completely different brands. Both names have a different number of letters, ANNAS has 5 letters and AmmA has 4 letters. The font and style of the former is different and with an image of a person attached to the trademark sign. Our font, logo and stylisation is completely different in comparison and can be identified as being a different product completely. Along with this, on our packaging we have our language (tamil), written on it very clearly in front. Please find attached these images for your convenience. Currently, we are solely distributing rice which is a product ANNAS does not do. So I fail to understand how these products can be mistaken. It is very easy to say product names sounds phonetically similar. If that be the case many products will have similar sounds to it. Both products have different number of letters and different letters. The only similarity that I believe these products have is the fact they both start with 'A'. But this similarity can be spotted with many other companies that start with 'A' by coincidence. Also, in the statement, the opponent has said our product 'AmmA' is very similar to theirs. However, this is the incorrect spelling of my trademark. It is spelt 'AmmA' which is visibly a lot different - having the two 'm's in the middle being of the lower case of the alphabet. Whereas, their company has all its letters in block capitals and in uppercase letters, again another difference. The stylisation of the way 'AmmA' is written also clearly allows it to be distinguished as a different product. The opponent has mentioned both products have 2 syllables, but so has many other companies. In conclusion, the style, font, the way the product names have been spelt the logo, the product being distributed, languages on the packaging are all completely different I therefore disagree with the statement made.”

5. Rule 6 of the Trade Marks (Fast Track Opposition)(Amendment) Rules 2013, S.I. 2013 2235, disapplies paragraphs 1-3 of Rule 20 of the Trade Mark Rules 2008, but provides that Rule 20(4) shall continue to apply. Rule 20(4) states that:

“(4) The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit.”

6. The net effect of these changes is to require parties to seek leave in order to file evidence in fast track oppositions. No leave was sought in respect of these proceedings (but see paragraph 26 below).

7. Rule 62(5) (as amended) states that arguments in fast track proceedings shall be heard orally only if (i) the Office requests it or (ii) either party to the proceedings requests it and the registrar considers that oral proceedings are necessary to deal with the case justly and at proportionate cost; otherwise written arguments will be taken. A hearing was neither requested nor considered necessary; the opponent filed written submissions which I will refer to, as necessary, below.

DECISION

8. The opposition is based upon section 5(2)(b) of the Act, which reads as follows:

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

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

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

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

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

10. The trade mark upon which the opponent relies qualifies as an earlier trade mark under the above provisions. As this earlier trade mark is not subject to proof of use, the opponent is entitled to rely upon all of the goods it has identified.

Section 5(2)(b) – case law

11. The following principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v 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.

The principles:

(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 will wrongly believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

The correct approach to the comparison

12. In his counterstatement, the applicant refers to the manner in which the competing trade marks are actually used and the goods upon which he is currently using his trade mark. Those are, however, factors of which I can take no account. In making a decision, what I am required to do, is compare the trade mark and goods for which registration has been sought with the opponent's trade mark and the goods for which it is registered and upon which the opponent relies.

The average consumer and the nature of the purchasing act

13. As the case law above indicates, it is necessary for me to determine who the average consumer is for the goods at issue; I must then determine the manner in which these goods are likely to be selected by the average consumer in the course of trade. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

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

14. The average consumer is a member of the general public who is likely to purchase the low cost goods at issue on a fairly regular basis. As such goods will, typically, be self-selected from the shelves of a retail outlet such as a supermarket or from the pages of a website, visual considerations will dominate the selection process. Although I do not discount aural considerations, they will, in my view, be a much less significant feature of the process. Given the low cost of the goods and the likely frequency of purchase, I would expect the average consumer to pay a lower than normal degree of attention during the selection process.

Comparison of goods

15. The competing goods are as follows:

Opponent's goods	Applicant's goods
Class 30 - Biscuits; Gingerbread biscuits; cakes; confectionery; cookies; (industrial) pastry; speculoos (caramelized biscuits); spreads on the basis of cookies, speculoos (caramelized biscuits), coffee or chocolate paste.	Class 30 - Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, ices; honey, treacle; yeast, baking-powder; salt, mustard; vinegar, sauces (condiments); spices; ice; sandwiches; prepared meals; pizzas, pies and pasta dishes.

16. 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 of its judgment 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”.

17. 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 users of the respective goods or services;
- b) The physical nature of the goods or acts of services;
- c) The respective trade channels through which the goods or services reach the market;
- d) 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;
- e) 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.

18. In *Beautimatic International Ltd v Mitchell International Pharmaceuticals Ltd and Another*, [2000] F.S.R. 267, Neuberger J. (as he then was) stated that:

"I should add that I see no reason to give the word "cosmetics" and "toilet preparations"... anything other than their natural meaning, subject, of course, to the normal and necessary principle that the words must be construed by reference to their context."

19. In *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch), Floyd J. (as he then was) stated that:

"... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless the principle should not be taken too far. *Treat* was decided the way it was because the ordinary and natural, or core, meaning of 'dessert sauce' did not include jam, or because the ordinary and natural description of jam was not 'a dessert sauce'. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question."

20. In *Les Éditions Albert René v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* – T-336/03, the General Court ("GC") stated that:

“61... The mere fact that a particular good is used as a part, element or component of another does not suffice in itself to show that the finished goods containing those components are similar since, in particular, their nature, intended purpose and the customers for those goods may be completely different.”

21. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criteria capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (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”.

22. Finally, in *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the 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 fur 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”.

23. In its submissions, the opponent refers to three decisions of the European Union Intellectual Property Office’s (“EUIPO”) Opposition Division, in which it conducted comparisons of goods the same or similar to those in these proceedings. I am not, of course, bound by these decisions; I have, however, borne their comments in mind in reaching the conclusions which follow.

24. The term “confectionery” appears in both the application and the earlier trade mark and is literally identical. As: (i) “pastry” in the application would include “(industrial) pastry” in the earlier trade mark (ii) “honey” and “treacle” in the application would be included within the phrase “spreads on the basis of cookies...” and (iii) “preparations made from cereals” would include (at least) “biscuits” in the earlier trade mark, these competing goods are to be regarded as identical on the principles outlined in *Meric*.

25. As all of the goods which remain i.e. coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee, flour, bread, ices; yeast, baking-powder; salt, mustard; vinegar, sauces (condiments); spices; ice; sandwiches; prepared meals; pizzas, pies, pasta dishes are (broadly speaking) either food products, ingredients of food products or goods used to flavour food products, the users of the competing goods at issue may be the same as, at a high level of generality, may be the nature, intended purpose, method of use and trade channels. That degree of generality, however, tells one little. It is, as a consequence, necessary to dig deeper.

26. In its submissions, the opponent states:

“13...In the UK, it is common for manufacturers in the food and drink industry to produce a wide range of goods under the same brand and consumers have been educated to recognise that various different products, which are all types of food and drink, can originate from a single source even if the goods do not obviously fall within the same category of food and drink...”

Attached to the opponent’s submissions are photographs in support of the above submission. Had the opponent wished to rely upon such photographs in these proceedings, it should, at the appropriate time, have sought leave to file such photographs as evidence. As no such leave was sought, the photographs attached to its submissions will play no part in these proceedings.

27. In relation to: “coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee, ices; yeast, baking-powder; salt, mustard; vinegar, sauces (condiments); spices; ice; sandwiches; prepared meals; pizzas, pasta dishes”, the opponent argues these goods are complementary to its goods as:

“they are likely to be enjoyed together by the end user, may be produced by the same companies and will be found near each other on the shelves in supermarkets.”

28. Keeping in mind the opponent’s submissions and the guidance contained in the case law mentioned above, other than the high level of general similarity I mentioned earlier, the goods in the application shown below are not, in my view, complementary nor, as a consequence, similar to the opponent’s goods 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”. Equally, I see no meaningfully competitive relationship between the opponent’s goods and the following goods:

Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour, ices; yeast, baking-powder; salt, mustard; vinegar, sauces (condiments); spices; sandwiches; prepared meals; pizzas, and pasta dishes.

29. As to “ice” in the application, ice is readily understood as frozen water and is most likely to be sold in the form of ice cubes. Considered in that context, and as (at least) the nature, intended purpose and method of use of “ice” as a product differs from the opponent’s goods, it cannot, on any reasonable view, be considered similar to such goods.

30. That leaves “bread” and “pies” in the application to consider. Bread includes goods such as sweetened breads, such as fruit loaves and malt loaves. As sweetened bread may be a substitute for “cakes” in the earlier trade mark, there is a degree of competition between them. In addition, “cakes” and “bread” can often be found in the bakery section of a supermarket, where the bakery section has baked both the “bread” and the “cakes”. Taking into account the general similarity

mentioned earlier, the nature, common areas where they are sold and the competitive relationship between them, “bread” in the application is, in my view, similar to a reasonable degree to (at least) “cakes” in the earlier trade mark.

31. In relation to “pies”, the opponent argues that “they are similar to (industrial) pastry, biscuits, cookies” as they are all bakery products which may be produced by the same company, satisfy the same purpose, are aimed at the same customers, made available via the same distribution channels and are in competition with one another. The term “pies” in the application would include for, example, goods such as apple pies, whereas the earlier trade mark includes, inter alia, “cakes” in its specification. As both sets of goods I have identified are sold as a sweet treat and are, in my experience, routinely found on the same shelves in, for example, a supermarket, in addition to the general similarity mentioned earlier, the goods coincide in (at least) their intended purpose/method of use and are in competition with one another. As a consequence, there is, in my view, a reasonable degree of similarity between “pies” in the application and (at least) “cakes” in the earlier trade mark.

Comparison of trade marks

32. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade 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 trade marks must be assessed by reference to the overall impressions created by the trade 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.”

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

Opponent’s trade mark	Applicant’s trade mark
ANNAS	

34. The opponent’s trade mark consists of a five letter word presented in upper case. As no part of the trade mark is highlighted or emphasised in any way that is the overall impression it will convey and where its distinctiveness lies.

35. The applicant's trade mark consists of a number of elements. The first, is a rectangle presented in blue which acts as a background for the word which appears on it; it has little or no distinctive character and will have little, if any, weight in the overall impression the applicant's trade mark conveys. The second element consists of a four letter word presented in a slightly stylised but unremarkable font in which the first and last letter "A" are presented in upper case whereas the letter "m"s between them are presented in lower case. This word is presented in the colours red and black and is surrounded by a thin white border. I have no doubt that it is the word "AmmA" (rather than the font and colours in which it is presented) which will dominate the overall impression the applicant's trade mark conveys. Before I go on to consider the competing trade marks from the visual, aural and conceptual perspectives, I should say a little more about the colours in which the applicant's trade mark is presented. In short, as notional and fair use of the opponent's trade mark would include use in exactly the same colours as those in the applicant's trade mark, the fact that the applicant's trade mark is shown in colour is not a factor that assists the applicant in these proceedings.

Visual comparison

36. The competing elements consist of four and five letters respectively and the first and fourth letters of each trade mark i.e. the upper case letter "A" is the same. They differ to the extent that the opponent's trade mark contains an additional letter "S" at the end of the trade mark and the second and third letters of the competing trade marks consist of "N"s presented in upper case and "m"s presented in lower case respectively. However, the fact that the competing trade marks share the same first and fourth letter presented in upper case combined with the sharing of repeated letters "N"s and "m"s in the second and third letter positions results, in my view, in the trade marks at issue being visually similar to a fairly high degree.

Aural comparison

37. The similarities I have identified above combined with the fact that both trade marks consist of two syllables i.e. "Am-ma" and "AN-NAS", also results in them being aurally similar to a fairly high degree.

Conceptual comparison

38. In its submissions, the opponent argues that the competing trade marks are conceptually similar as both consist of female names. Firstly, there is no evidence which establishes that Amma is a female name. It is certainly not a female name with which I am familiar and I see no reason why the average consumer would take a different view of the matter. In my view, the average consumer will treat the word AmmA as invented. While I understand the opponent's submission in relation to its own trade mark, absent an apostrophe between the letters "N" and "S", once again I see no reason why the average consumer would approach the opponent's trade mark in the manner it suggests. It is, in my view, much more likely to be treated as an invented word. As neither parties' trade mark will, in my view, create any concrete conceptual message in the average consumer's mind, the conceptual position is neutral.

Distinctive character of the earlier trade mark

39. 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. In determining the distinctive character of a trade mark and, accordingly, in assessing whether it is highly distinctive, it is necessary to make an overall assessment of the greater or lesser capacity of the trade mark to identify the goods for which it has been registered as coming from a particular undertaking and thus to distinguish those goods from those of other undertakings - *Windsurfing Chiemsee v Huber and Attenberger* Joined Cases C-108/97 and C-109/97 [1999] ETMR 585.

40. These are fast track opposition proceedings in which it was not necessary for the opponent to provide evidence of the use it may have made of its earlier trade mark. Having already concluded that the average consumer will treat the opponent's trade mark as an invented word, it follows that it is, absent use, possessed of a high degree of inherent distinctive character.

Likelihood of confusion

41. In determining whether there is a likelihood of confusion, 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 vice versa. As I mentioned above, it is also necessary for me to keep in mind the distinctive character of the opponent's trade mark as the more distinctive this trade mark is, the greater the likelihood of confusion. I must also keep in mind the average consumer for the goods, the nature of the purchasing process and 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 he has retained in his mind.

42. In *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA, Lady Justice Arden stated that:

“49..... I do not find any threshold condition in the jurisprudence of the Court of Justice cited to us. Moreover I consider that no useful purpose is served by holding that there is some minimum threshold level of similarity that has to be shown. If there is no similarity at all, there is no likelihood of confusion to be considered. If there is some similarity, then the likelihood of confusion has to be considered but it is unnecessary to interpose a need to find a minimum level of similarity.”

43. Having concluded that there is no meaningful degree of similarity between the opponent's goods and:

Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour, ices, yeast, baking-powder; salt, mustard; vinegar, sauces (condiments); spices; ice; sandwiches; prepared meals; pizzas and pasta dishes

in the application, there can be no likelihood of confusion and the opposition to these goods fails accordingly.

44. I must now consider the matter in relation to those goods I have found to be either identical or similar to a reasonable degree i.e.

Preparations made from cereals, bread, pastry and confectionery, honey, treacle, pies.

45. I have already concluded that the average consumer will select the goods at issue by primarily visual means and will pay a lower than normal degree of attention during that process. In this regard, the fairly high degree of visual and aural similarity between the competing trade marks together with the high degree of inherent distinctive character the opponent's trade mark possesses, and the lack of a conceptual hook to aid the average consumer's recall (making them more prone to the effects of imperfect recollection) will, in my view, combine to lead to a likelihood of direct confusion i.e. one trade mark will be mistaken for the other.

Overall conclusion

46. As a consequence of the above conclusions, the opposition succeeds in relation to:

Preparations made from cereals, bread, pastry and confectionery, honey, treacle, pies,

but fails in relation to:

Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour, ices, yeast, baking-powder; salt, mustard; vinegar, sauces (condiments); spices; ice; sandwiches; prepared meals; pizzas and pasta dishes.

Costs

47. Although both parties have achieved a measure of success, as the applicant has been substantially more successful than the opponent, he is entitled to a contribution towards his costs. Awards of costs in fast track oppositions filed after 1 October 2015 are governed by Tribunal Practice Notice (TPN) 2 of 2015. Using that TPN as a guide but bearing in mind that the applicant has not been professionally represented and making a "rough and ready" reduction to reflect the measure of the opponent's success, I award costs to the applicant on the following basis:

Preparing a statement and considering the opponent's statement: £75

Total: £75

48. I order Aktiebolaget Annas Pepparkakor to pay to Mr Gokulavannan Paramanathan the sum of **£75**. This sum is to be paid within fourteen days of the expiry of the appeal period or within fourteen days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 17th day of May 2016

C J BOWEN
For the Registrar