O/0468/25

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00003925849
BY THE HOUSE OF GREEN LIMITED TO REGISTER:

Sweet Mary

SweetMary

(SERIES OF TWO)

AS TRADE MARKS IN CLASSES 3, 5, 25, 30, 31, 32, 33, 34, 35, 41 & 43

AND

IN THE MATTER OF THE OPPOSITION THERETO
UNDER NO. 443511 BY
MW EAT LIMITED

BACKGROUND AND PLEADINGS

1. On 22 June 2023, The House of Green Limited ("the applicant") applied to register the series of trade marks shown on the cover page of this decision in the UK ("the application"). The application was published for opposition purposes on 7 July 2023 and registration is sought for the goods and services set out in the **Annex** of this decision.

2. The application is derived from an earlier filed trade mark in Guernsey under registration number 1029025. The filing date of this earlier mark is 30 May 2023. The result of this is that the application in the present proceedings benefits from this earlier filing date as its priority date. This is, therefore, to be treated as the relevant date for the present proceedings.

3. On 9 October 2023, the application was partially opposed by MW Eat Limited ("the opponent"). The opposition is based upon sections 5(2)(b) and 5(3) of the Trade Marks Act 1994 ("the Act"). Under both grounds, the opponent relies on the following marks:

   CHUTNEY MARY
   UK registration no. 910010494[1]
   Filing date 31 May 2011; registration date 2 November 2011
   ("the opponent's first mark"); and

   CHUTNEY MARY
   UK registration no. 3341321
   Filing date 26 September 2018; registration date 14 December 2018
   ("the opponent's second mark").

[1] The opponent's first mark is a comparable mark based on an earlier EUTM. On 1 January 2021, in accordance with Article 54 of the Withdrawal Agreement between the UK and the European Union, the UK IPO created comparable UK trade marks for all right holders with existing EUTMs. These comparable marks enjoy the same filing and registration dates as their European counterparts.

4. In respect of the services relies upon, I note that for both grounds of opposition, the opponent's first mark is reliant upon the following class 43 services only:

Class 43: Services for providing food and drink; restaurant, bar and catering services; preparation of food and drink; restaurant services for the provision of fast food.

5. As for the opponent's second mark, I note that under the section 5(2) ground, the opponent seeks to rely on all services for which it is registered, namely:

Class 43: Restaurant services; services for providing food and drink; temporary accommodation services; bar services; catering services; preparation of food and drink; restaurant services for the provision of fast food; take away food and drink services; cafes; cafeterias; cafe bars; bistros; consultancy services relating to food and drink; cookery advice; hospitality services; hotel café, bar and restaurant services; hiring of rooms for social functions; providing conference rooms; providing information about café, bar and restaurant services; providing information about temporary accommodation.

6. However, under the section 5(3) ground in reliance upon the second mark, the opponent has limited its services to those services listed at paragraph four above. While the second mark is registered for 'services for providing food and drink', 'preparation of food and drink' and 'restaurant services for the provision of fast food' it is not registered for 'restaurant, bar and catering services' as one service. That being said, it does have them registered as separate terms and, as such, I do not consider that this issue has any bearing on the present proceedings whatsoever. I say this because while the opponent's second mark is registered for services that are worded differently, they essentially cover the same services referred to in the

notice of opposition. As such, I will take the opponent's section 5(3) ground in respect of its second mark to be reliant upon the following services:

Class 43: Services for providing food and drink; bar and restaurant services; catering services; preparation of food and drink; restaurant services for the provision of fast food.

7. As I have set out above, the opposition is partial and aimed only at some of the goods and services that the applicant seeks to register. The goods and services targeted under the separate grounds differ and I will break this down here. Firstly, the opposition under section 5(2)(b) is aimed at the following goods and services:

Class 30: Ice, ice creams, frozen yogurts and sorbets; Coffee, teas and cocoa and substitutes therefor; Chocolate; Bakery goods; candy bars; Pastries, cakes, tarts and biscuits (cookies).

Class 32: Non-alcoholic beverages; beer; preparations for making beverages.

Class 33: Alcoholic beverages (except beer).

Class 41: Night clubs; club entertainment services.

Class 43: Private members clubs services; club services for the provision of food and drink.

8. As for the opposition brought under section 5(3), this is aimed at the following goods and services:

Class 5: Herbal dietary supplements for persons [with] special dietary requirements; nutritional supplements; dietary supplements;

health food supplements made principally of vitamins; oils, gels and creams containing cannabidiol.

Class 30: Ice, ice creams, frozen yogurts and sorbets; Coffee, teas and cocoa and substitutes therefor; Chocolate; Candy; Bakery goods; Sweets (candy), candy bars and chewing gum; Pastries, cakes, tarts and biscuits (cookies); Cereal bars and energy bars.

Class 32: Non-alcoholic beverages; beer; preparations for making beverages.

Class 33: Alcoholic beverages (except beer).

Class 34: Electronic cigarettes; liquid nicotine solutions for use in electronic cigarettes; flavourings, other than essential oils, for use in electronic cigarettes; electronic cigarette liquids; electronic cigarette liquid solutions containing nicotine; flavour essences for electronic cigarettes and electronic smoking devices; electronic cigarette atomizers; electronic cigarette cartomizers; nicotine-free liquid solutions containing flavourings for electronic cigarettes and electronic smoking devices; personal vaporisers and electronic cigarettes; electronic cigarette boxes; electronic cigarette cases; smokers' articles; parts and fittings for all the aforesaid goods.

Class 41: Night clubs; club entertainment services.

Class 43: Private members clubs services; club services for the provision of food and drink.

9. In respect of the section 5(2)(b) ground, the opponent argues that the goods and services are either identical, highly similar or similar to an average degree. The

opponent also claims that the marks are similar to between a moderate and a medium degree. In addition, the opponent relies on the extensive use it has made of its marks and, as such, claims that they enjoy an enhanced degree of distinctive character. As a result of all of these factors, the opponent's position is that there exists a likelihood of confusion on the part of the public, including a likelihood of association.

10. Under the section 5(3) ground, the opponent contends that its marks have established a reputation in respect of the services relied upon. As a result of this reputation and the similarity between the marks and the goods and services at issue, the opponent claims that consumers would understand there to be an association or link between the marks. The opponent claims that this link means that any use of the application would give rise to an unfair advantage in favour of the applicant. Further, the opponent claims that use of the application would be detrimental to the distinctive character and/or reputation of the opponent's marks. The opponent claims that the applicant's use of its application is without due cause.

11. The applicant filed a counterstatement wherein it denied the claims against it. In addition, the applicant requested that the opponent provide proof of use for its first mark.

12. The applicant is represented by Brandsure Limited and the opponent is represented by Lewis Silkin LLP. Only the opponent filed evidence in chief and, in doing so, also elected to file written submissions. No hearing was requested and only the opponent filed written submissions in lieu of the same. This decision is taken after careful consideration of the papers.

13. 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.

EVIDENCE

14. The opponent's evidence came in the form of the witness statement of Mr Ranjit Mathrani dated 13 May 2024. Mr Mathrani is a director of the opponent, a position he has held since 1988. His statement is accompanied by eight labelled exhibits, being RM1 to RM8, though I note that some of these are broken down to include sub-exhibits, such as RM1a to RM1e, for example. Mr Mathrani's statement was adduced to demonstrate his company's use of its first mark and the enhanced distinctiveness/reputation of both marks.

15. I do not intend to summarise the evidence in full here (or the submissions of the opponent, for that matter). However, I confirm that I have taken all filed documents into account and will summarise them to the extent that I deem necessary below.

DECISION

Proof of use

16. As set out above, the opponent's first mark is subject to a proof of use request from the applicant. The opponent's second mark is not eligible for proof of use so even if the opponent is unable to prove that it has genuinely used it first mark, the opposition will proceed. In the present case, given the identity of the opponent's marks and the close association between the services relied upon, it would be appropriate for me to forego a genuine use assessment and simply proceed in considering this decision on the basis of the second mark only. That being said, I will be required to undertake a full assessment of the evidence when it comes to the issue of enhanced distinctive character under the present ground and of reputation under the section 5(3) ground. Therefore, I do not consider that

foregoing the proof of use assessment at this stage offers any procedural benefit. I will, therefore, proceed to consider it in the ordinary way.

17. 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,
>
> (aa) a comparable trade mark (EU) or a trade mark registered pursuant to an application made under paragraph 25 of Schedule 2A which has a valid claim to seniority of an earlier registered trade mark or protected international trade mark (UK) even where the earlier trade mark has been surrendered or its registration has expired;
>
> (ab) a comparable trade mark (IR) or a trade mark registered pursuant to an application made under paragraph 28, 29 or 33 of Schedule 2B which has a valid claim to seniority of an earlier registered trade mark or protected international trade mark (UK) even where the earlier trade mark has been surrendered or its registration has expired.
>
> […]
>
> (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."

18. Section 6A is also relevant. It reads:

"(1) This section applies where:

(a) an application for registration of a trade mark has been published,

(b) there is an earlier trade mark of a kind falling within section 6(1)(a), (aa) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and

(c) the registration procedure for the earlier trade mark was completed before the start of the relevant period.

(1A) In this section "the relevant period" means the period of 5 years ending with the date of the application for registration mentioned in subsection (1)(a) or (where applicable) the date of the priority claimed for that application.

(2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.

(3) The use conditions are met if –

(a) within the relevant period the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or

(b) the earlier trade mark has not been so used, but there are proper reasons for non- use.

(4) For these purposes –

(a) use of a trade mark includes use in a form (the "variant form") differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and

(b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(5)-(5A) [Repealed]

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services."

19. Given their earlier filing dates, the opponent's marks both qualify as earlier trade marks under the above provisions. The opponent's first mark completed its registration processes over five years prior to the priority date of the application. As set out above, the applicant requested that the opponent provide proof of use in respect of its first mark. As a result, the opponent's first mark is subject to the proof of use assessment.

20. As for the opponent's second mark, this did not complete its registration process more than five years before the priority date of the application so it is not eligible for such a request under the use provisions. Therefore, as alluded to above, the opponent can rely on this mark for all services highlighted regardless of the outcome of the present assessment.

21. Section 100 of the Act is also relevant. It reads:

> "100. If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it."

22. As the opponent's first mark is a comparable mark, paragraph 7 of Part 1, Schedule 2A of the Act is also relevant. It reads:

> "7.— (1) Section 6A applies where an earlier trade mark is a comparable trade mark (EU), subject to the modifications set out below.
>
> (2) Where the relevant period referred to in section 6A(3)(a) (the "five-year period") has expired before IP completion day—
>
> (a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM; and
>
> (b) the references in section 6A(3) and (4) to the United Kingdom include the European Union.
>
> (3) Where [IP completion day] falls within the five-year period, in respect of that part of the five-year period which falls before IP completion day —
>
> (a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM; and
>
> (b) the references in section 6A to the United Kingdom include the European Union".

23. In *easyGroup Ltd v Nuclei Ltd & Ors* [2023] EWCA Civ 1247, Arnold LJ summarised the law relating to genuine use as follows:

> "105. The principles applicable to determining whether there has been genuine use of a trade mark have been considered by the CJEU in a considerable number of cases, the principal decisions being Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, Case C-259/02 *La Mer Technology Inc v Laboratories Goemar SA* [2004] ECR I-1159, Case C-416/04 P *Sunrider Corp* v *Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bundervsvereinigung Kamaradschaft 'Feldmarschall Radetsky'* [2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Merken BV v Hagelkruis Beheer BV* [EU:C:2012:816], Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], Case C-141/13 *P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089], Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434] and Joined Cases C–720/18 and C–721/18 *Ferrari SpA v DU* [EU:C:2020:854].
>
> 106. Ignoring issues which do not arise in the present case, such as use in relation to spare parts or second-hand goods and use in relation to a sub-category of goods or services, the principles may be summarised as follows:
>
> (1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37].
>
> (2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at

[36]; *Sunrider* at [70]; *Verein* at [13]; *Centrotherm* at [71]; *Leno* at [29]; *Ferrari* at [32].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Centrotherm* at [71]; *Leno* at [29]; *Gözze* at [37], [40]; *Ferrari* at [32].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use

of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34]; *Leno* at [29]-[30], [56]; *Ferrari* at [33].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no *de minimis* rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72]; *Leno* at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32]."

24. Section 6A of the Act (cited above) confirms that the relevant period for the present assessment is the five-year period prior to the priority date of the application, being 30 May 2023. The relevant period is, therefore, 31 May 2018 to 30 May 2023 ("the relevant period").

25. Again, because the opponent's first mark is a comparable mark based upon an earlier EUTM, use of the same in the EU prior to IP Completion Day (being 31 December 2020) is relevant to the present assessment.[2] As a result, the relevant territory for the period 31 May 2018 to 31 December 2020 is the EU whereas after

[2] See paragraph 4 of Tribunal Practice Notice 2/2020

that date, it is the UK only. On this point, I refer to the case of *Leno Merken BV v Hagelkruis Beheer BV*, Case C-149/11, wherein the Court of Justice for the European Union ("CJEU") noted that:

> "It should, however, be observed that … the territorial scope of the use is not a separate condition for genuine use but one of the factors determining genuine use, which must be included in the overall analysis and examined at the same time as other such factors. In that regard, the phrase 'in the Community' is intended to define the geographical market serving as the reference point for all consideration of whether a Community trade mark has been put to genuine use."
>
> And
>
> "50. Whilst there is admittedly some justification for thinking that a Community trade mark should – because it enjoys more extensive territorial protection than a national trade mark – be used in a larger area than the territory of a single Member State in order for the use to be regarded as 'genuine use', it cannot be ruled out that, in certain circumstances, the market for the goods or services for which a Community trade mark has been registered is in fact restricted to the territory of a single Member State. In such a case, use of the Community trade mark on that territory might satisfy the conditions both for genuine use of a Community trade mark and for genuine use of a national trade mark."

26. Proven use of a mark which fails to establish that "the commercial exploitation of the mark is real"[3] because the use would not be "viewed as warranted in the economic sector concerned to maintain or create a share in the mark for the goods or services protected by the mark" is, therefore, not genuine use.

[3] *Jumpman* BL O/222/16

Evidence of use

27. The opponent's evidence sets out that it uses the 'CHUTNEY MARY' mark for the operation of a fine dining Indian restaurant. The evidence confirms that this restaurant was founded in 1990. While it was originally located in Kings Road, Chelsea in London, it moved location in 2015 to St James's, London, being where it continues to operate from. The evidence sets out that the restaurant can seat over 100 people.

28. A number of printouts are provided taken from the opponent's website that it claims to show use of the CHUTNEY MARY mark in relation to the class 43 services relied upon.[4] The printouts are taken from the internet archive facility, the Wayback Machine. The narrative evidence of Mr Mathrani sets out that the printouts are dated between 1990 and 2023. Having considered them myself, I note that they are actually dated between 1999 and 2023. I see no merit in discussing these printouts in any great detail but do note that they clearly show a website that relates to an Indian restaurant called 'CHUTNEY MARY'. I also note that some of the printouts show reviews from various publications such as The Sunday Times, The Evening Standard and the Michelin Guide, amongst others. Lastly, the printouts also show a number of customer testimonials. The reviews and testimonials appear on printouts dated from 1 August 2018 onwards but it is not clear to me when the reviews/testimonials were actually issued.

29. The evidence goes on to provide copies of third-party articles and reviews of the opponent's restaurant.[5] Some are dated, some are not. I do not intend to discuss all of these but note that, of the reviews that are dated, they show coverage from websites such as 'restaurantonline.co.uk' (dated 18 November 2020), The Standard (covering three articles dated 1 February 2018, 25 June 2021 and 24 October 2022), Marie Claire (dated 13 August 2007) and the Diplomat (dated 17

[4] RM1
[5] RM2

September 2019)[6]. This evidence is also accompanied by readership figures for the Standard and Marie Claire in the UK. The Marie Claire readership figures conclude prior to the relevant period but, for the Standard, the evidence confirms that during the relevant period, the Standard attracted a high level of readership in the UK, peaking at 16,894,000 between April 2018 to March 2019. Even without such evidence, I am content to conclude that such publications are well-known nationwide publications that attract a high readership. In respect of the actual content of the articles provided, I do not intend to discuss them in any great detail but note that they do include a range of positive reviews in respect of the restaurant.

30. Printouts from various online hospitality review platforms such as TripAdvisor, Yelp and SquareMeal are provided.[7] There are approximately 50 pages worth of printouts and while I do not consider it necessary to discuss them in full, I will do so briefly. I note that all of these printouts are either undated or were obtained on 7 May 2024. As a result, it is not possible for me to determine whether the overall figures provided on them (1,400 reviews are shown on TripAdvisor, for example) are reflective of the position during the relevant period or as at the relevant date. That being said, the TripAdvisor printouts show a range of reviews that are dated between 16 December 2015 and 17 April 2023. Throughout this time, the printouts demonstrate a consistent level of reviews being posted over these years. In respect of the locations of the user's posting reviews, I note that they include reviews from users based in London, Greece, Ware (Hertfordshire), Leicester, Norwich, Cambridge, Winchester and Cowes (Isle of Wight). As for the Yelp printout, this shows a more limited range of reviews that were posted between 10 October 2022 and 21 February 2023. Lastly, the SquareMeal printout shows just 10 reviews and these are dated between 24 May 2016 and 28 December 2022.

[6] While some of these articles fall outside the relevant period for the present assessment, I refer to them here for the sake of completeness. For the avoidance of doubt, those articles from outside the relevant period do not form part of my consideration of genuine use.
[7] RM3

31. In respect of revenue, the opponent sets out that since 2015, the restaurant has generated revenue in excess of £6.5 million a year. This is confirmed as relating to the provision of restaurant and bar services under the 'CHUTNEY MARY' mark. The evidence does state that the exception to this was the financial years 2020 to 2022, during which time the hospitality sector faced serious disruption due to the COVID-19 pandemic. While no evidence in support of the figures provided (such as accounts printouts, for example), the figures are confirmed as being taken from the opponent's internal records and given that the evidence is accompanied by a signed statement of truth and no challenge has been forthcoming from the applicant, I have no reason to disbelieve such a statement.

32. Since opening in 1990, the opponent confirms that it has provided its services to over 2 million customers. Since 2015, this is confirmed as being, on average, around 90,000 customers per year, again excluding the 2020 to 2022 financial years due to the COVID-19 pandemic.

33. The opponent has provided a range of evidence that it refers to as marketing efforts. While noted, these are simply printouts from the opponent's social media accounts.[8] Such evidence is, therefore, not necessarily evidence of marketing efforts or promotional campaigns. That being said, I note that it covers around 40 pages of printouts with all bar two pages being from the opponent's Instagram account that show range of different posts. The Instagram account shows that it has 11,700 followers and while the posts shown in evidence are mostly from within the relevant period, the engagement levels in respect of the same are limited (with each post showing approximately 100 likes). The last two printouts of this exhibit are taken from the opponent's Facebook and Twitter accounts which, respectively, show followers of 3,600 and 1,330. All of these printouts are taken from May 2024, being almost a year after the conclusion of the relevant period. Therefore, while the followers numbers are noted, it is not possible to determine with any degree of

[8] RM4

accuracy what the actual level of followers were during the relevant period. Further, I am of the view that the international nature of social media in general is such that the followers and engaging users (being those who liked the Instagram posts) could be from outside the relevant territory. As a result, I do not consider that this evidence is of any particular assistance to the opponent. That being said, I do not ignore it entirely.

34. The evidence goes on to discuss a number of awards that the restaurant has won. In support of these awards, the opponent has provided a number of different printouts regarding the same.[9] I see no reason to discuss each and every award but note that they include the 'Best New Restaurant' award given by Square Meal Lifestyle BMW Awards in December 2015. While outside the relevant period for the present assessment, I reference it here because it may be of assistance later on in my decision. The other awards referred to include 'CHUTNEY MARY' being named the 'AA Best Restaurant of the Year Award' in 2023. While this award covers 2023, which is when the end of the relevant period fell, it appears to have been awarded no later than 28 September 2023 (being the date of the article covering the same). As an annual award, I consider it reasonable to infer that it was awarded in response to the activities of the restaurant prior to the end of the relevant period on 30 May 2023. I appreciate that there are a number of other accolades referred to, such as Best Indian in Britain and Best Modern Indian Restaurant, for example. However, these awards (and the others referred to) are undated so it is not clear when they were awarded. It is, therefore, reasonable to suggest that they are likely to have been awarded outside the relevant period. As such, I am unable to determine their relevance to this assessment.

[9] RM5

Assessment of the evidence

35. I am of the view that I can deal with my assessment of the evidence of use relatively briefly. I say this because, save for any inevitable shutdown or capacity restrictions due to the COVID-19 pandemic, it is clear that the opponent was operating a restaurant at all material times during the relevant period. This is on the basis that the evidence is consistent in that it shows numerous reviews of the relevant years from customers who had visited the restaurant. In addition, while I appreciate that the evidence in respect of turnover and customer figures could have benefited with more precision (such as annual breakdown of revenue as opposed to vague claims of annual revenue), I see no reason to doubt it. I, therefore, accept that during the relevant period the opponent's restaurant attracted approximately 90,000 customers a year for an annual revenue in excess of £6.5 million. While the opponent confirms that this level of use is not applicable to two years during the relevant period (2020 to 2022), this was a result of the COVID-19 pandemic's impact on the sector within which the opponent operates. In the circumstances, I consider it appropriate to make an allowance for any lower level of use over this period.

36. In my view, the only hurdle to the opponent's use is in relation to the fact that the use shown in evidence comes from just one location in London. That being said, I do not consider that this offers too much of a problem for the opponent's claim as to use. I say this because the evidence shows coverage of the restaurant in nationwide publications. In my view, this is sufficient to show that there would have undoubtedly been a level of awareness of the restaurant across the entirety of the UK. Further, as set out at paragraph 30 above, the customer reviews stem from users across the UK and in countries in the EU (which prior to 31 December 2020, formed part of the relevant territory). This further demonstrates the reach of the opponent's restaurant.

37. Taking all of the above into account, I am content to conclude that the opponent has genuinely used its mark throughout the relevant period. That being said, I consider that this relates solely to restaurant and bar services, being the services that Mr Mathrani sets out as being the services covered by the revenue figures (see paragraph 11 of his witness statement). As such, I consider it appropriate to limit the opponent's term of "restaurant, bar and catering services" to "restaurant and bar services". As a result, this is the only term upon which the opponent's reliance upon its first mark may proceed under both the section 5(2)(b) and 5(3) grounds.

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

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

> "(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 or association with the earlier trade mark."

39. 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."

40. 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 Office for Harmonization 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 great degree of similarity between the marks, and vice versa;

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;

(k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of goods and services

41. The competing goods and services that are relevant to the present ground are as follows:

The opponent's services	The applicant's goods and services
Class 43 Restaurant and bar services Class 43 Restaurant services; services for providing food and drink; temporary accommodation services; bar services; catering services; preparation of food and drink; restaurant services for the provision of fast food; take away food and drink services; cafes; cafeterias; cafe bars; bistros; consultancy services relating to food and drink; cookery advice; hospitality services; hotel café, bar and restaurant services; hiring of rooms for social functions; providing conference rooms; providing information about café, bar and restaurant services; providing information about temporary accommodation.	Class 30 Ice, ice creams, frozen yogurts and sorbets; Coffee, teas and cocoa and substitutes therefor; Chocolate; Bakery goods; candy bars; Pastries, cakes, tarts and biscuits (cookies). Class 32 Non-alcoholic beverages; beer; preparations for making beverages. Class 33 Alcoholic beverages (except beer). Class 41 Night clubs; club entertainment services. Class 43 Private members clubs services; club services for the provision of food and drink.

42. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account. In the judgment of the CJEU in *Canon*, Case C-39/97, the court stated at paragraph 23 that:

"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".

43. 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.

44. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T-133/05, the General Court 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."

45. I have both evidence and submissions in respect of the goods and services comparison from the opponent. I can confirm that while I have given these due consideration, I do not intend to discuss them in any detail here.

Class 30

Ice, ice creams, frozen yogurts and sorbets; chocolate; bakery goods; candy bars; pastries, cakes, tarts and biscuits (cookies).

46. The above goods are products that are in a form that is ready to eat. The opponent's services are for the provision of food and drink and are not limited in any way so may, therefore, cover the provision of the above goods. Clearly, the goods and services differ in nature and method of use. As for purpose, I accept that the end purpose for both the goods and services is to provide food to the consumer. That being said, the actual purpose of the goods and services are different. In respect of trade channels, I am of the view that these goods and services may be sought from the same undertaking. Further, the provider of the opponent's services is also likely to produce the above goods in house. Therefore, I find that the trade channels of the goods and services overlap. As for user, I consider that this overlaps also. This is on the basis that it is common for those looking to eat the above goods to also seek the provision of the same via a restaurant. On this point, I appreciate that there is also a degree of competition between the goods and services as a user may choose to buy the goods to consume at home over visiting a restaurant, or vice versa. Lastly, I am of the view that there is a degree of complementary between these goods and services in the

way described by the caw law.[10] I say this on the basis that the above foodstuffs are important to the services for the provision of the same. This relationship is, in my view, such that the end consumer will believe that the restaurant providing the above goods is also the producer of said goods. Taking all of this into account, I find that these goods and services are similar to a medium degree.

Coffee, teas and cocoa and substitutes therefor.

47. While the above goods cover drinks, I see no reason why the same overlaps discussed in the preceding paragraph cannot apply here. I say this because the opponent's services, being restaurant and bar services, cover the provision of the above drinks as well as a range of foodstuffs. As such, I find that there exists an overlap in trade channels and user between these goods and services. Further, there exists both competitive and complementary relationships between the goods and services. As such, I find that they are similar to a medium degree.

Classes 32 and 33

Non-alcoholic beverages; beer; preparations for making beverages; alcoholic beverages (except beer).

48. I can deal with these classes of goods together on the basis that they are all beverage goods, albeit the class 33 goods are alcoholic in nature. Both of the opponent's mark's include "bar services" wherein the above goods will all be provided to the consumer. As a result, I am of the view that the above goods will be sought from the same trade channels as the opponent's services. Further, the users will overlap as people who consume beverages are also likely to seek bar services. As was the case with the class 30 goods above, these goods and services will be competitive in nature on the basis that consumers may look to buy

[10] See *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06

beverages to consume at home over going to a bar, or vice versa. Lastly, following similar reasons to those discussed at paragraph 46 above, I find that these goods and services are complementary to one another. Taking all of this into account, I find that these goods and services are similar to a medium degree.

Class 41

Night clubs; club entertainment services.

49. The above services are different in nature with the opponent's "bar services", which is present in both of its specifications. Saying that, I consider that there is some overlap in method of use as the club services are likely to be obtained in very similar way to the opponent's bar services. Further, both parties' services are known for not only providing drinks but also entertainment. I make the latter point on the basis that bars often have karaoke or quiz evenings and also show live sporting events. As such, I find that their purposes overlap. As for trade channels and user, I consider that it is common for the providers of bar services to also provide night clubs and club entertainment services, all of which will be sought by the same consumer. As a result, I find that the trade channels and users of these services overlap also. In addition, I consider it common in the trade that a night club or entertainment club is likely to also operate a bar services within its premises. As such, I consider that a bar service is important to a club service meaning that consumers will consider these services to be complimentary to one another. Lastly, I am of the view that users may elect to visit a bar to entertain themselves with friends over a night club, or vice versa. Therefore, these services are also competitive in nature. Overall, I find that these services are similar to a high degree.

Class 43

Private members clubs services; club services for the provision of food and drink.

50. The opponent's second mark's specification includes the term "hospitality services". Such a term is so broad that I see no reason why it would not encompass the above services of the applicant. As such, I find that these services are identical under the principle outlined in *Meric*. In addition, I note that the opponent's first mark includes "bar services" (as does the second mark, for that matter). While not identical, I consider that these are similar. I say this because there is nothing preventing the opponent's term from being operated on a 'private membership' basis, in the same way the above term of the applicant's is. Further, bar services commonly provide both food and drink. As such, I find that these services share the same methods of use, purpose, trade channels and user. Further, they are competitive in nature. As such, I find that they are highly similar.

The average consumer and the nature of the purchasing act

51. The case law, as set out earlier, requires that I determine who the average consumer is for the respective parties' goods and services. I must then decide the manner in which these goods and services 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. (as he then was) 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."

52. The goods and services at issue are those that will be selected by members of the general public at large, with the alcoholic beverages and nightclub services being aimed at consumers over the age of 18. The goods at issue will be available via general retailers and their online equivalents or via food/drink establishments such as restaurants and bars. In stores, the goods will be displayed on shelves where they will be self-selected by the consumer. A similar approach will apply to goods selected online as the consumer will select them after having seen an image of them on a website. In food/drink establishments, the goods are likely to be selected aurally but this will take place after a visual inspection of the goods either in display cabinets, on menus or lists displayed behind a counter. As for the services, these will be selected after the consumer has viewed signage on the high street, promotional materials, after undertaking internet searches or via word-of-mouth recommendations. In my view, the selection process for both the goods and the services at issue will be primarily visual but I do not discount an aural component playing a role for the reasons set out above.

53. The goods and services will be selected on a frequent basis and will range in cost from cheap to relatively expensive. For example, goods such as ice cream will be cheap but goods such as rare or limited bottles of whisky can be relatively expensive. The same goes for the services in that a fast-food restaurant may be cheap but a high-end steakhouse will be expensive. That being said, regardless of the costs of the goods/services the factors that the consumer considers will be relatively ordinary. For the selection of the goods, this will involve considerations as to flavour, ingredients and nutritional/alcohol content. For the services, the consumer will consider factors such as selection of food/drink offered, dietary requirements, reviews and hygiene ratings. Overall, I am of the view that the selection process for the goods and services will attract a medium degree of attention.

Comparison of the marks

54. It is clear from *Sabel 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.

55. 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."

56. 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.

57. The opponent's marks are identical and, therefore, for the purpose of this assessment, I will refer to them in the singular, i.e. "the opponents' mark". As for the marks in the application, I am of the view that while they are technically not identical, they can be treated as such for the purpose of this assessment. This is on the basis that the only difference between them is the utilisation of a space between the two words in the first mark but not in the second. In my view, this

difference will go unnoticed by the average consumer who will readily identity the second mark as the conjoining of two individual words. Therefore, for the purpose of this assessment, I will only consider the first mark in the application and hereby confirm that my findings in relation to the same is to be taken as applicable to both of the applicant's marks. For the avoidance of doubt, I will refer to the first mark in the application as, simply, "the applicant's mark".

The opponent's mark	The applicant's mark
CHUTNEY MARY	Sweet Mary

58. I note that the parties have commented on the comparison of the marks in their pleading documents. Further, I note that the opponent expanded upon these in their written submissions (both during the evidence rounds and in lieu). I can confirm that I have given these documents due consideration but will only refer to them below if I consider it necessary to do so.

Overall impression

59. The opponent submits that the nature of the applicant's goods is such that the word 'Sweet' will only serve to describe a characteristic of the goods. As for 'Mary', this is entirely distinctive. As such, the opponent's position is that 'Mary' dominates the overall impression of the applicant's mark. I appreciate that 'Sweet', solus, will allude to the nature of some of the applicant's goods (i.e. they are foods/drinks that are sweet). However, to conclude that this is how consumers will view 'Sweet' in the applicant's mark will, in my view, be a result of the artificial dissection of the mark to the point that it ignores the presence of the word 'Mary'. Instead, I am of the view that when considering the mark as a whole (which is what consumers tend to do), the consumer will consider it to be a reference to a female named Mary who

is sweet natured, i.e. someone who is pleasant and gentle.[11] As a result, I find that the overall impression of the applicant's mark lies in the words 'Sweet Mary', in combination.

60. Turning to the opponent's mark, this consists of the words 'CHUTNEY MARY'. 'CHUTNEY' will be understood by the majority of UK consumers as a condiment of Indian origin whereas 'MARY' will be understood as a female forename. I do not consider that the words hang together in the same way that 'Sweet Mary' does. I say this because 'CHUTNEY' is not a characteristic that a person can possess in the same way that 'Sweet' is. Therefore, any reference to a Mary who is 'chutney' is illogical. On this point, I also wish to set out that, to me, it seems illogical that 'CHUTNEY MARY' will be understood by consumers as a reference to a Mary who makes chutney. In considering the opponent's mark, I would ordinarily find that because (1) 'CHUTNEY' refers to a condiment consumed alongside foods and (2) the nature of the opponent's services is for the provision of food, it would play a lesser role. However, in the present case, 'MARY' will be instantly understood as a common forename in the UK and, as such, it will be viewed as unremarkable from a trade mark perspective. Therefore, despite the possible allusiveness of the word 'CHUTNEY', I find that 'MARY' is equally lacking impact from a trade mark perspective. As such, I find that the overall impression of the opponent's mark lies equally in the words 'CHUTNEY MARY'.

Visual comparison

61. Visually, the marks share 'MARY as their second words. The marks differ in the presence of their first words, being 'Sweet' in the applicant's mark and 'CHUTNEY' in the opponent's. On this point, I remind myself that consumers tend to focus on the beginnings of marks.[12] While I consider that this compounds the points of

[11] See the definition of 'sweet' in British English at point three of https://www.collinsdictionary.com/dictionary/english/sweet
[12] *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

difference even further, I cannot ignore the fact that the marks share the same second word. As such, I find that the parties' marks are similar to no more than a medium degree.

Aural comparison

62. Aurally, I consider that both marks will be pronounced in the ordinary way. The opponent's mark consists of four syllables whereas the applicant's consists of three. The last two syllables of the marks are identical; however, the remaining syllables differ entirely. As above, consumers tend to focus on the beginnings of marks. Further, I am of the view that from an aural perspective, the parties' marks are short and while there is no special test for short marks,[13] I am of the view that in the present case, the shortness of the marks at issue is such that the average consumer is more likely to notice the differences. Taking all of this into account, I am of the view that the marks are aurally similar to no more than a medium degree.

Conceptual comparison

63. The opponent's position in respect of the conceptual comparison is that they are highly similar, if not identical. This is on the basis of the claimed highly similar definitions of the words 'SWEET' and 'CHUTNEY'. I note that the definitions relied upon are provided at paragraph five of the opponent's statement of grounds which sets out the following:

> "The word 'MARY' present in the Applicant's Sign is preceded by the word 'SWEET', which is defined as "*being, inducing, or marked by one of the five basic taste sensations that is usually pleasing to the taste and typically induced by sugars*". The word 'MARY' present in the Opponent's Trade Marks is

[13] See paragraph 44 of *BOSCO*, BL O/301/20

preceded by the word 'CHUTNEY', which is defined as "*a mixture containing fruit, spices, sugar and/or vinegar [for example, mango chutney]*"

64. While not provided as evidence, they are ordinary dictionary definitions that I am entitled to rely on. That being said, the definition provided for ‘sweet’, while correct, seems overly technical and, as such, it is likely beyond the understanding of an average consumer who will simply understand sweet as a reference to something that has a taste *like that of sugar*.

65. The above being said, I consider that ‘Sweet’, in the context of the applicant’s mark, conveys a different meaning to the one put forward by the opponent. I have explained why above. Taking this into account, I do not consider that the argument put forward by the opponent is applicable here. As such, I find that the reference to ‘Sweet’ and ‘CHUTNEY’ across the parties’ marks is not a point of conceptual similarity. Therefore, the only shared concept lies in the word ‘Mary’. This will act as a point of conceptual similarity between the marks on the basis that it is the same name. That being said, because it is a common female forename, I do not consider that the average consumer will place a significant amount of weight on its shared use. Taking all of this into account, I find that the marks are conceptually similar to between a low and medium degree.

66. In the event that I am wrong that consumers would consider ‘Sweet’ in the way put forward by the opponent, I do not consider that this necessarily assists the opponent to any material degree. I say this because while I accept that chutneys are often sweet, the connection between the word ‘sweet’ and ‘chutney’ is, in my view, a step too far to result in a finding that the consumer would immediately grasp an obvious association between the words. Such a connection would be the result of a mental process that, in my view, goes beyond how consumers actually consider the concept of trade marks. As such, I find that the same conclusion reached above would also be reached in the event that consumers viewed ‘Sweet’ in the way submitted by the opponent.

Distinctive character of the opponent's marks

67. 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)."

68. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced through use. On this point, I note that

the opponent has pleaded that its marks enjoy an enhanced degree of distinctive character and has filed evidence in support of that claim. However, before considering that claim, I will first consider the inherent position.

69. I have discussed above that 'CHUTNEY MARY' will not form a unitary phrase and will, instead, be viewed as a combination of two words with no meaning outside of their individual meanings. 'CHUTNEY' will be viewed as a reference to the condiment. In light of the services of the opponent, the consumer will believe that it means that the foods offered by the opponent will include chutneys or, given the connection of chutney to Indian food, they will believe it to be an Indian restaurant. Even if this is not the case (as the opponent's services are not limited this way), I consider it reasonable to conclude that this is how consumers will understand the word. As a result, I consider that 'CHUTNEY' is somewhat allusive. As for 'MARY', this will be instantly understood as a common female forename. Forenames, especially common ones, are generally attributed less distinctive than surnames (see paragraph 54 of *Fusco v OHIM – Fusco International (ENZO FUSCO)*, Case T-185/03, and *Harman International Industries, Inc v OHIM,* Case C-51/09P). While there is no surname at play here, I consider that this principle applies and results in a finding that the word 'Mary' sits on the lower end of the scale for distinctiveness due to its common nature.

70. Taking the above into account, I am of the view that the inherent distinctiveness of the opponent's marks sits at the lower end of the scale. That being said, I do not consider that this extends outright to low and, instead, I find that the opponent's marks only possess between a low and medium degree of inherent distinctive character. I turn now to consider the position in respect of an enhanced degree of distinctive character.

71. In considering the evidence filed, I have summarised this at paragraphs 27 to 34 above. I do not intend to reproduce this in full but note that the opponent's restaurant has been offering services since 1990 and that, since 2015, it accrued

an annual revenue of over £6.5 million stemming from serving approximately 90,000 customers a year. For a single venue restaurant, this is a sizeable level of use. On this point, I remind myself that the opponent's figures are not applicable to the years 2020 to 2022 due to the COVID-19 pandemic. In addition to this evidence, the opponent has achieved a number of positive reviews from nationwide publications and, further, was the subject of a wide range of customer reviews on various restaurant rating websites. Lastly, I note that the evidence covers a number of different awards. I remind myself that the awards evidence was not necessarily helpful to the issue of genuine use because I could not accurately attribute it to the relevant period. The same issue applies here in that it is entirely reasonable for me to conclude that the awards were given after the relevant date. That being said, on balance, I am of the view that it is reasonable to conclude that at least some of them would have been obtained prior to the relevant period. On this point, the 2015 award that I have discussed above now becomes relevant to the present issue so is of assistance to the opponent here. As a result, I consider that the awards evidence is slightly more persuasive to the present assessment than it was to the use assessment, though only marginally.

72. Taking the evidence of use into account, I am content to conclude that the distinctiveness of the opponent's marks has been enhanced through the use made of them. That being said, the inherent position was relatively low and the use before me, while sufficient, is not significant. As such, I am only willing to conclude that the distinctiveness of the opponent's marks has been enhanced to a medium degree. For the same reasons discussed when considering genuine use above, I find that this applies only to the services of "restaurant and bar services" in the opponent's first mark and "restaurant services" and "bar services" in its second.

Likelihood of confusion

73. 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 marks, 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 minds.

74. I have found the goods and services to either be identical or similar to either a high or medium degree. The average consumer base is formed of members of the general public (with some goods/services specifically aimed at consumers over the age of 18) who will select the goods via primarily visual means (with the aural component contributing to some degree). In respect of the level of attention paid, I have found that the consumer will pay a medium degree of attention. In respect of the similarity of the marks at issue, I have found them to be visually and aurally similar to no more than a medium degree and conceptually similar to between a low and medium degree. Lastly, I have found that the opponent's mark is inherently distinctive to between a low and medium degree. The opponent's first mark has been enhanced to a medium degree of distinctiveness in respect of "restaurant and bar services" whereas the second mark has been enhanced (to the same degree) for "restaurant services" and "bar services".

75. Taking all of the above into account and even bearing in mind the principle of imperfect recollection, I consider that the average consumer, upon being confronted by the parties' marks, even on identical or highly similar goods and

services, would be able to accurately recall or remember which mark was which. I appreciate that the parties' marks share the word 'MARY' at their ends and, on this point, I acknowledge that common elements at the end of marks *may* lead to confusion.[14] However, in the present case, I am of the view that the addition of the words 'Sweet' and 'CHUTNEY' at the start of the marks will enable consumers to accurately recall the marks for one another. In support of this finding, I remind myself that the similarity of the marks is not on the higher end of the scale and even though there is a shared conceptual hook in that both marks refer to a person named Mary, this is a common forename in the UK and is not, therefore, sufficient to overcome the aforementioned differences.[15] For the avoidance of doubt, I consider that this finding applies regardless of whether consumers understand 'Sweet' in the applicant's marks to be a reference to a 'sweet foods' as submitted by the opponent. Consequently, I do not consider that there exists a likelihood of direct confusion between the marks, even on identical or highly similar goods and services.

76. I will now proceed to consider indirect confusion. In doing so, I remind myself of the case of *L.A. Sugar Limited v By Back Beat Inc*, BL O/375/10, wherein Mr Iain Purvis Q.C., 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,

[14] *Bristol Global Co Ltd v EUIPO,* T-194/14
[15] While I appreciate that conceptual similarities may overcome visual and aural differences (see *The Picasso Estate v OHIM*, Case C-361/04 P), this is not always the case (see *Nokia Oyj v OHIM,* Case T-460/07).

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)”.

77. While the above examples in *L.A. Sugar* are noted, they are not intended to be treated as an exhaustive list of the only instances wherein indirect confusion occurs.

78. Further, I note the case of *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, wherein Arnold LJ referred to the comments of James Mellor Q.C. (as he then was), sitting as the Appointed Person in *Cheeky*

Italian Ltd v Sutaria (O/219/16), where he said at paragraph 16 that "a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion". Arnold LJ agreed, pointing out that there must be a "proper basis" for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

79. In the present case, I appreciate that the consumer will notice that both marks include the word 'Mary'. However, this is a common forename in the UK and, as such, I do not consider this shared element to be so strikingly distinctive to give rise to a belief on the part of the consumers that only one undertaking would use it. Even taking into account the fact that the opponent's marks enjoy an enhanced degree of distinctiveness, this resides in marks as wholes and not solely in the 'MARY' element. In addition, I have found that this has only enhanced the distinctiveness to a medium degree. Therefore, the enhanced distinctiveness of the opponent's marks does not reside in the common elements so it is of no real assistance here.

80. In addition, I see no reason why the average consumer would consider the change from 'CHUTNEY' to 'Sweet', or vice versa, before the word 'MARY' to be a logical indicator that is consistent with a sub-brand or brand extension. I say this primarily on the basis that 'Sweet' combines with 'Mary' in the marks in the application to form a unitary meaning. This meaning is, as above, a person named Mary who is of a sweet nature. I see no reason why a consumer would believe an undertaking that uses 'CHUTNEY MARY' (being words which have no obvious connection to one another) and change the first word so that it creates a distinct reference to a sweet natured person named Mary. Such a change is not, in my view, something that would logically point to an undertaking named 'Mary' that offers food services relating to chutney having extended her brand to now selling goods such as ice creams, for example. Further, even if there was some connection made between the words 'Sweet' and 'CHUTNEY', I do not consider that average consumers would believe that an undertaking with a direct reference to an Indian condiment

would change it to refer to the broader defined word, being ‘Sweet’, or vice versa. If it were the case that the change was from ‘CHUTNEY MARY’ to another type of condiment, such as ‘RELISH MARY’ for example, then I can see such an argument being logical and of assistance. However, that is not the case here and, to me, the changes in the present case seem like illogical ones. Consequently, I consider that there is no likelihood of indirect confusion between the marks at issue, even on goods and services that are identical or highly similar.

81. While the section 5(2)(b) ground fails in its entirety, the opponent also relies on section 5(3) of the Act and I will now proceed to consider that ground.

Section 5(3)

82. Section 5(3) of the Act states:

> “5(3) A trade mark which –
>
> > is identical with or similar to an earlier trade mark, shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom (or, in the case of a European Union trade mark or international trade mark (EC), in the European Union) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or repute of the earlier trade mark.”

83. The relevant case law can be found in the following judgments of the CJEU: Case C-375/97, *General Motors,* Case 252/07, *Intel,* Case C-408/01, *Adidas-Salomon,* Case C-487/07, *L’Oreal v Bellure,* Case C-323/09, *Marks and Spencer v Interflora,* Case C383/12P, *Environmental Manufacturing LLP v OHIM.* The law appears to be as follows:

a) The reputation of a trade mark must be established in relation to the relevant section of the public as regards the goods or services for which the mark is registered; *General Motors, paragraph 24.*

(b) The trade mark for which protection is sought must be known by a significant part of that relevant public; G*eneral Motors, paragraph 26.*

(c) It is necessary for the public when confronted with the later mark to make a link with the earlier reputed mark, which is the case where the public calls the earlier mark to mind; *Adidas Salomon, paragraph 29* and *Intel, paragraph 63.*

(d) Whether such a link exists must be assessed globally taking account of all relevant factors, including the degree of similarity between the respective marks and between the goods/services, the extent of the overlap between the relevant consumers for those goods/services, and the strength of the earlier mark's reputation and distinctiveness; *Intel, paragraph 42*

(e) Where a link is established, the owner of the earlier mark must also establish the existence of one or more of the types of injury set out in the section, or there is a serious likelihood that such an injury will occur in the future; *Intel, paragraph 68;* whether this is the case must also be assessed globally, taking account of all relevant factors; *Intel, paragraph 79.*

(f) Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark, and requires evidence of a change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious risk that this will happen in future; *Intel, paragraphs 76 and 77* and *Environmental Manufacturing, paragraph 34.*

(g) The more unique the earlier mark appears, the greater the likelihood that the use of a later identical or similar mark will be detrimental to its distinctive character; *Intel, paragraph 74.*

(h) Detriment to the reputation of the earlier mark is caused when goods or services for which the later mark is used may be perceived by the public in such a way that the power of attraction of the earlier mark is reduced, and occurs particularly where the goods or services offered under the later mark have a characteristic or quality which is liable to have a negative impact of the earlier mark; *L'Oreal v Bellure NV, paragraph 40*.

(i) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the holder of the mark in order to create and maintain the mark's image. This covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation (*Marks and Spencer v Interflora, paragraph 74 and the court's answer to question 1 in L'Oreal v Bellure).*

84. Under the present ground, the opposition is aimed at a slightly broader set of goods and services than those targeted under the section 5(2)(b) ground. I remind myself that these are as follows:

Class 5:	Herbal dietary supplements for persons [with] special dietary requirements; nutritional supplements; dietary supplements; health food supplements made principally of vitamins; oils, gels and creams containing cannabidiol.

Class 30: Ice, ice creams, frozen yogurts and sorbets; Coffee, teas and cocoa and substitutes therefor; Chocolate; Candy; Bakery goods; Sweets (candy), candy bars and chewing gum; Pastries, cakes, tarts and biscuits (cookies); Cereal bars and energy bars.

Class 32: Non-alcoholic beverages; beer; preparations for making beverages.

Class 33: Alcoholic beverages (except beer).

Class 34: Electronic cigarettes; liquid nicotine solutions for use in electronic cigarettes; flavourings, other than essential oils, for use in electronic cigarettes; electronic cigarette liquids; electronic cigarette liquid solutions containing nicotine; flavour essences for electronic cigarettes and electronic smoking devices; electronic cigarette atomizers; electronic cigarette cartomizers; nicotine-free liquid solutions containing flavourings for electronic cigarettes and electronic smoking devices; personal vaporisers and electronic cigarettes; electronic cigarette boxes; electronic cigarette cases; smokers' articles; parts and fittings for all the aforesaid goods.

Class 41: Night clubs; club entertainment services.

Class 43: Private members clubs services; club services for the provision of food and drink.

85. The conditions of section 5(3) are cumulative. Firstly, the opponent must show that the marks are similar.[16] Secondly, the opponent must show that its marks have

[16] Given my findings under the section 5(2)(b) ground, I am satisfied that there is a degree of similarity between all of the marks at issue.

achieved a level of knowledge/reputation amongst a significant part of the public throughout the relevant territory.[17] Thirdly, it must be established that the level of reputation and the similarities between the parties' marks will cause the public to make a link between them, in the sense of the earlier marks being brought to mind by the application. Finally, assuming the first three conditions have been met, section 5(3) requires that one or more of the types of damage will occur. It is unnecessary for the purposes of section 5(3) that the goods and services be similar, although the relative distance between them is one of the factors which must be assessed in deciding whether the public will make a link between the marks.

Reputation

86. I have discussed the pleadings of the opponent above. I do not intend to repeat that here but remind that while the opponent relies on a broader set of services under its first mark, my genuine use assessment has limited this reliance to the following:

Class 43: Restaurant and bar services.

87. As for the reliance upon its second mark, I have deemed that this may proceed in respect of the following services:

Class 43: Services for providing food and drink; bar and restaurant services; catering services; preparation of food and drink; restaurant services for the provision of fast food.

88. I have assessed the opponent's evidence of use at paragraphs 27 to 34 above. While that related to the first mark only, I see no reason why it cannot directly apply

[17] Which, in respect of the first mark prior to 31 December 2020, includes the EU.

to the second mark on the basis that the marks are identical and the services relied upon are, essentially, the same. While I appreciate that the present assessment is not the same as an assessment for enhanced distinctive character, I am of the view that in the present case, a similar outcome to that which was reached there can apply here. I say this because the present assessment is directed at the same relevant date as that assessment. Further, even though the territory at issue for the first mark is wider for the present assessment, I do not consider that it necessarily impacts upon the fact that the opponent has clearly used its part in the relevant territory. Adopting the same reasoning that I have discussed at paragraphs 71 and 72 above, I hereby find that the opponent's marks enjoy a reputation that is moderate in strength. Lastly, as has been the case with all of my evidential assessments in this decision, I find that this reputation extends only to "restaurant and bar services" in the opponent's first mark and "restaurant services" and "bar services" in its second.

Link

89. As noted above, my assessment of whether the public will make the required mental 'link' between the marks must take account of all relevant factors. The factors identified in *Intel* are:

The degree of similarity between the conflicting marks.

90. Under the second 5(2)(b) ground above, I conducted a full comparison of the marks at issue. As the marks relevant there are also relevant here, I adopt those findings in the present ground. Therefore, I find that the parties' marks are visually and aurally similar to no more than a medium degree and conceptually similar to between a low and medium degree.

The nature of the goods or services for which the conflicting marks are registered, or proposed to be registered, including the degree of closeness or dissimilarity between those goods or services, and the relevant section of the public.

91. The goods and services targeted under the present ground overlap significantly with those attacked under the section 5(2)(b) ground. Where the goods overlap, I can simply adopt my above findings here. As such, I find that the majority of the class 30 goods and all of the goods and services in classes 32, 34, 41 and 43 are either similar to high or medium degrees with the reputed services of the opponent.[18] However, where there is no overlap, I must consider the additional goods and services here. I note that the additional goods and services are as follows:

Class 5:	Herbal dietary supplements for persons [with] special dietary requirements; nutritional supplements; dietary supplements; health food supplements made principally of vitamins; oils, gels and creams containing cannabidiol.
Class 30:	Candy; Sweets (candy); Chewing gum; cereal bars and energy bars.
Class 34:	Electronic cigarettes; liquid nicotine solutions for use in electronic cigarettes; flavourings, other than essential oils, for use in electronic cigarettes; electronic cigarette liquids; electronic cigarette liquid solutions containing nicotine; flavour essences for electronic cigarettes and electronic smoking devices; electronic cigarette atomizers; electronic cigarette cartomizers; nicotine-free liquid solutions containing flavourings for electronic cigarettes and

[18] On this point, I note that there was some identity found above but this related to the opponent's broader 'hospitality services' so is not applicable to the present ground. In respect of the services to which those services were compared, I remind myself that I found a high degree of similarity with "bar services" which is relevant to both of the opponent's marks here.

electronic smoking devices; personal vaporisers and electronic cigarettes; electronic cigarette boxes; electronic cigarette cases; smokers' articles; parts and fittings for all the aforesaid goods.

92. I am of the view that I can deal with the class 5 and class 34 goods swiftly. I say this because I see no obvious degree of similarity between them. Firstly, there is no overlap in nature, method of use or purpose with the opponent's reputed services. In respect of trade channels, I have nothing to suggest that class 5 supplement goods or electronic cigarettes, for example, are available in bars or restaurants. Further, I have nothing to suggest that the provider of such goods would also operate their own bars or restaurants. Lastly, I appreciate that the user may be the same. However, this is somewhat fleeting on the basis that both goods and services at issue are targeted at the relevant public at large. As such, I find that these goods are dissimilar to the reputed services of the opponent. That being said, there is some degree of closeness between the relevant public that selects such goods and services.

93. Moving on to the class 30 goods, it is my understanding that candy, sweets, cereal bars and energy bars may be available at different types of bars or restaurants. For example, a restaurant may offer such goods for dessert or as part of a breakfast offering. Further, energy bars can cover a range of different types of bars that are high in glucose or protein and I see no reason why such establishments would be excluded from offering those also. Therefore, I am of the view that I can adopt the same outcome in comparing these goods with the opponent's reputed services as I did at paragraph 46 above, namely that they are similar to a medium degree.

94. As for "chewing gum" in the applicant's class 30 list of goods, I do not consider that the same finding reached above can be said to apply here. I say this because such goods are unlikely to be offered by bars or restaurants and, further, the consumer will be aware of the differences in the undertakings that provide such goods and those that provide restaurant services. Therefore, they do not overlap in trade

channels and neither are they complementary or competitive in nature. Lastly, I accept that there is an overlap in user between such goods and services. However, this is not sufficient by itself to warrant a degree of similarity and, instead, I find them to be dissimilar. As was the case above, however, I do accept that there is some degree of closeness between the relevant public that selects such goods and services.

The strength of the earlier mark's reputation.

95. I have found the opponent's reputation to be moderate in strength.

The degree of the earlier mark's distinctive character, whether inherent or acquired through use.

96. I have found that the opponent's marks are inherently distinctive to between a low and medium degree but have also found this to have been enhanced to a medium degree based on the use made of them. For the avoidance of doubt, this finding only extends to the same services for which I have found a reputation.

Whether there is a likelihood of confusion

97. Under the section 5(2)(b) ground, I found that there is no likelihood of confusion between the opponent's marks and the marks in the application. This finding applied in respect of identical and similar goods but I remind myself that, under that assessment, I did not consider any dissimilar goods. This was because all of the goods and services at issue under that ground were found to be identical or similar. Here, that is not the case and while section 5(2)(b) grounds require there to be similarity between goods and services in order for there to be confusion,[19] the provisions of section 5(3) offer additional protection which takes into account the

[19] See paragraph 49 of *eSure Insurance v Direct Line Insurance,* [2008] ETMR 77

repute and distinctiveness of the earlier marks. For example, some marks are so distinctive and well-known that there is likely to be some confusion almost irrespective of the goods or services on which the marks are used. All that being said, in the present case, I do not consider that the opponent's mark are so distinctive and well-known so as to trigger such a finding. In short, I do not consider the fact that the opponent's marks enjoy a moderate reputation is sufficient to alter the outcome reached above. Therefore, adopting the same reasoning I have applied under paragraphs 75 and 79 to 80 above, I find that there exists no likelihood of confusion under the present ground for any of the goods and services at issue.

Conclusion on link

98. While I have found there to be no confusion, this is not the end of the matter as the opponent has claimed that consumers would believe that there was a link between the marks at issue. This claim is noted, however, I see no reason why the consumer would bring to mind the opponent's marks when confronted by 'Sweet Mary', even on highly similar services. Further, I do not consider that the consumer would be caused to wonder if the marks at issue were linked. In short, the consumer would identify that the only common element is the name 'Mary', being the marks' second words. This will immediately be understood as a common female forename and, as such, the fact that two marks contain the same common name is something that would be considered wholly unsurprising. Even when taking into account the existence of a reputation in 'CHUTNEY MARY', the shared use of a common forename is, without anything further, not sufficient and, therefore, does not give rise to a finding that the consumer would believe the marks to be linked. In addition, I remind myself that 'Sweet Mary' will be understood as reference to a sweet natured woman named Mary whereas the reputed marks of the opponent carry no such association. This unitary meaning of the marks in the application is such that the consumer, even knowing of the 'CHUTNEY MARY' brand, would not consider them to be linked in any way.

99. Taking all of this into account, I find that there exists no link between the marks at issue. Without a link between the marks, there can be no damage. Therefore, it is not necessary to proceed to consider any of the opponent's claimed heads of damage. Therefore, I find that the section 5(3) ground fails.

CONCLUSION

100. The opposition fails in its entirety and, subject to any successful appeal of my decision, the application is permitted to proceed to registration for all of the goods and services applied for.

COSTS

101. The applicant has succeeded in full and is, therefore, entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 1/2023. In the present case, the applicant only engaged in these proceedings by way of filing a counterstatement. That being said, even though it did not file its own evidence, I consider costs should be awarded for the task of having to consider the opponent's evidence, albeit in a reduced amount. In the circumstances, I award the applicant the sum of £600 as a contribution towards its costs. The sum is calculated as follows:

Considering a notice of opposition and preparing a counterstatement:	£300
Considering evidence of the opponent:	£300
Total:	**£600**

102. I hereby order MW Eat Limited to pay The House of Green Limited the sum of £600. 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 28th day of May 2025

A COOPER
For the Registrar

ANNEX

Class 3

Skincare cosmetics; skin moisturisers; skin cream; skin conditioners; skin cleansers; skin lotions; skin moisturizer masks; salves [non-medicated]; dermatological skin creams [other than medicated]; exfoliants; exfoliant creams; exfoliating scrubs for the body; exfoliating scrubs for the face; exfoliants for the care of the skin; facial care preparations; facial preparations; facial cleansers; facial creams; facial washes; facial scrubs; facial lotion; herbal extracts for cosmetic purposes; aromatherapy oil; massage oils; essential oils and aromatic extracts; natural essential oils; natural oils for cosmetic purposes; body oil; facial oils; hemp-based cbd oils for cosmetic purposes.

Class 5

Medicinal oils; hemp oils; medicinal herbs; medicinal herb extracts; herbal medicine; extracts of medicinal herbs; liquid herbal supplements; herbal creams for medical use; herbal sprays for medical use; herbal dietary supplements for persons special dietary requirements; nutritional supplements; dietary supplements; vitamin supplements; vitamins and vitamin preparations; health food supplements made principally of vitamins; vitamin drops; gelatin capsules for pharmaceuticals, vitamins and supplements; muscle relaxants; salves [medicated]; liniments; protein dietary supplements; protein supplements for animals; vitamin supplements for animals; dietary supplements for animals; medicated supplements for animal feedstuffs; poultices; medicated animal feed; vitamins for animals; medicines for animals; medicated additives for animal feeds; medicated additives for animal foods; feeding stimulants for animals; medicated skin care preparations; medicated skin creams; medicated skin lotions; elixirs for calming the skin; pharmaceutical preparations for treating skin disorders; medicated ointments for application to the skin; medicated skin lotions for treating dermatological conditions; medicated skin creams for treating dermatological conditions; dietary supplements and dietetic preparations containing cannabidiol; oils, gels and creams containing cannabidiol.

Class 25

Clothing; footwear; headgear.

Class 30

Ice, ice creams, frozen yogurts and sorbets; Coffee, teas and cocoa and substitutes therefor; Chocolate; Candy; Bakery goods; Sweets (candy), candy bars and chewing gum; Pastries, cakes, tarts and biscuits (cookies); Cereal bars and energy bars.

Class 31

Animal feed; animal foodstuffs; edible chews for animals; beverages for animals; processed grains for consumption by animals; animal foodstuffs in the form of pellets; processed cereals for consumption by animals; horse feed; foodstuffs for horses; edible horse treats; food preparations for dogs; foodstuffs for dogs; edible dog treats; dog biscuits; beverages for dogs; food preparations for cats; animal foodstuffs containing cannabidiol; animal hemp products.

Class 32

Non-alcoholic beverages; beer; preparations for making beverages.

Class 33

Alcoholic beverages (except beer).

Class 34

Electronic cigarettes; liquid nicotine solutions for use in electronic cigarettes; flavourings, other than essential oils, for use in electronic cigarettes; electronic cigarette liquids; electronic cigarette liquid solutions containing nicotine; flavour essences for electronic cigarettes and electronic smoking devices; electronic cigarette atomizers; electronic cigarette cartomizers; nicotine-free liquid solutions containing flavourings for electronic cigarettes and electronic smoking devices; personal vaporisers and electronic cigarettes; electronic cigarette boxes; electronic cigarette cases; smokers' articles; parts and fittings for all the aforesaid goods.

Class 35

Retail services connected with the sale of products, namely skincare cosmetics, skin moisturisers, skin creams; Retail services connected with the sale of skin conditioners, skin cleansers, skin lotions, skin moisturizer masks, salves [non-medicated], dermatological skin creams [other than medicated], exfoliants, exfoliant creams, exfoliating scrubs for the body, exfoliating scrubs for the face, exfoliants for the care of the skin, facial care preparations, facial preparations, facial cleansers, facial creams, facial washes, facial scrubs, facial lotion, herbal extracts for cosmetic purposes, aromatherapy oil, massage oils, essential oils and aromatic extracts, natural essential oils, natural oils for cosmetic purposes, body oil, facial oils, hemp-based CBD oils for cosmetic purposes; retail services connected with the sale of products, namely medicinal oils, hemp oils, medicinal herbs, medicinal herb extracts, herbal medicine, extracts of medicinal herbs, liquid herbal supplements, herbal creams for medical use, herbal sprays for medical use, herbal dietary supplements for persons special dietary requirements, nutritional supplements, dietary supplements, vitamin supplements, vitamins and vitamin preparations, health food supplements made principally of vitamins, vitamin drops, gelatin capsules for pharmaceuticals, vitamins and supplements, muscle relaxants, salves [medicated], liniments, protein dietary supplements, protein supplements for animals, vitamin supplements for animals, dietary supplements for animals, medicated supplements for animal feedstuffs, poultices, medicated animal feed, vitamins for animals, medicines for animals, medicated additives for animal feeds, medicated additives for animal foods, feeding stimulants for animals, medicated skin care preparations, medicated skin creams, medicated skin lotions, elixirs for calming the skin, pharmaceutical preparations for treating skin disorders, medicated ointments for application to the skin, medicated skin lotions for treating dermatological conditions, medicated skin creams for treating dermatological conditions, dietary supplements and dietetic preparations containing cannabidiol, oils, gels and creams containing cannabidiol; retail services connected with the sale of products, namely clothing, footwear and headgear; retail services connected with the sale of products, namely ice, ice creams, frozen yogurts and

sorbets, coffee, teas and cocoa and substitutes therefor, chocolate, candy, bakery goods, sweets (candy), candy bars and chewing gum, pastries, cakes, tarts and biscuits (cookies), cereal bars and energy bars; retail services connected with the sale of products, namely animal feed, animal foodstuffs, edible chews for animals, beverages for animals, processed grains for consumption by animals, animal foodstuffs in the form of pellets, processed cereals for consumption by animals, horse feed, foodstuffs for horses, edible horse treats, food preparations for dogs, foodstuffs for dogs, edible dog treats, dog biscuits, beverages for dogs, food preparations for cats, animal foodstuffs containing cannabidiol, animal hemp products; retail services connected with the sale of products, namely non-alcoholic beverages, preparations for making beverages, alcoholic beverages (except beer); retail services connected with the sale of products, namely electronic cigarettes, liquid nicotine solutions for use in electronic cigarettes, flavourings, other than essential oils, for use in electronic cigarettes, electronic cigarette liquids, electronic cigarette liquid solutions containing nicotine, flavour essences for electronic cigarettes and electronic smoking devices, electronic cigarette atomizers, electronic cigarette cartomizers, nicotine-free liquid solutions containing flavourings for electronic cigarettes and electronic smoking devices, personal vaporisers and electronic cigarettes, electronic cigarette boxes, electronic cigarette cases, smokers' articles, parts and fittings for all the aforesaid goods; market research services; market research studies; market research and analysis; market research data collection services; business advisory services; business assistance, management and administrative services; administration in business affairs of franchises; business assistance relating to the establishment of franchises; business assistance relating to the operation of franchises; advertising, marketing and promotional consultancy, advisory and assistance services; providing consumer product advice and information; organisation of exhibitions for promotional purposes; information, advisory and consultancy in connection with all of the aforesaid services.

Class 41

Night clubs; club entertainment services.

Class 43

Private members clubs services; club services for the provision of food and drink.