

O/1005/25

TRADE MARKS ACT 1994

IN THE MATTER OF INTERNATIONAL REGISTRATION NO. WO0000001800875

IN THE NAME OF AVEPA AG

FOR THE FOLLOWING TRADE MARK:



IN CLASSES 6, 10, 20 & 21

AND

THE OPPOSITION THERETO UNDER NUMBER 450015

BY GÜROK TURİZM VE MADENCİLİK ANONİM SİRKETİ

Background and pleadings

1. AVEPA AG is the holder of the International Registration (“the IR”) shown on the previous page. The IR is registered with effect from 12 January 2024. With effect from the same date, the holder designated the UK as a territory in which it seeks to protect the IR. The following goods are opposed in these proceedings:

Class 21: Industrial containers of glass for packaging; glassware; unworked or semi-worked glass except construction glass for industrial packaging containers; boxes of glass; glass vials (containers); glasses (receptacles); jugs (containers).

2. On 4 October 2024, GÜROK TURIZM VE MADENCILIK ANONIM SIRKETI (“the opponent”) opposed the trade mark based upon Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). This is on the basis of its two earlier UK comparable trade marks:¹

1. **Làv**

UK registration number: UK00911224821

Filing date: 28 September 2012

Registration date: 7 March 2013

(“the opponent’s earlier ‘821 registration”)

The following goods are relied on for this opposition:

Class 21: Household or kitchen utensils and containers; combs and sponges; brushes (except paintbrushes); brush-making materials; articles for cleaning

¹ On 1 January 2021, the UK left the EU after the expiry of the transition period. Under Article 54 of the Withdrawal Agreement, the Registry created comparable UK trade marks for all right holders with an existing EUTM. As a result of the opponent’s EUTM being registered as at the end of the Implementation Period, a comparable UK trade mark was automatically created. The comparable UK mark is now recorded on the UK trade mark register, has the same legal status as if it had been applied for and registered under UK law, and retains its original priority date.

purposes; steel wool; unworked or semi-worked glass (except glass used in building); glassware, porcelain and earthenware not included in other classes; dishes, jars, cookie jars, glasses, cups, trays, egg cups, coffee cups, saucepans, carafes, cake molds, teapots, tableware (other than knives, forks and spoons) made of glass and porcelain, namely, bowls, mugs, plates, salt and pepper shakers, gravy boats, jugs and vases; statuettes, statues and works of art of glass and porcelain.

2. **Lav**

UK registration number: UK00911224771

Filing date: 28 September 2012

Registration date: 25 March 2013

(“the opponent’s earlier ‘771 registration”)

The following goods are relied on for this opposition:

Class 21: Household or kitchen utensils and containers; combs and sponges; brushes (except paintbrushes); brush-making materials; articles for cleaning purposes; steel wool; unworked or semi-worked glass (except glass used in building); glassware, porcelain and earthenware not included in other classes; dishes, jars, cookie jars, glasses, cups, trays, egg cups, coffee cups, saucepans, carafes, cake molds, teapots, tableware (other than knives, forks and spoons) made of glass and porcelain, namely, bowls, mugs, plates, salt and pepper shakers, gravy boats, jugs and vases; statuettes, statues and works of art of glass and porcelain.

3. By virtue of their earlier filing dates, the opponent’s above registrations constitute earlier marks in accordance with section 6 of the Act. As the opponent’s earlier ‘821 and ‘771 registrations had been registered for more than five years before the filing date of the IR holder’s mark, they are, in principle, subject to the use provisions set

out in section 6A of the Act. The opponent has stated that it has used the marks for all the goods and services relied upon.

4. Under section 5(2)(b), the opponent claims that the respective goods and services are identical or highly similar and that the marks are similar. As such, the opponent submits there will be a likelihood of confusion between the marks, including a likelihood of association.

5. The IR holder filed a counterstatement in which they concede that the goods and services are similar or identical but deny that there is any similarity between the marks. The IR holder requested the opponent to file proof of use for the opponent's earlier registrations relied upon.

6. The opponent filed evidence to show use. The IR holder did not file evidence, but it filed written submissions in lieu of a hearing. No hearing was requested and so this decision is taken following a careful perusal of the papers.

7. The opponent is represented by Forresters IP LLP. The IR holder is represented by Gill Jennings & Every LLP.

8. 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

9. The opponent's evidence was filed in the form of a witness statement, dated 15 February 2025. This was filed by Mehmet Emir Karataş, the Head of Export Sales of GÜROK TURİZM VE MADENCİLİK ANONİM ŞİRKETİ, the opponent. The witness statement includes six exhibits labelled Annex 1 to Annex 6. The purpose of the evidence is to address the IR holder's request for the opponent to show proof of use for the opponent's earlier '821 and '771 registrations.

10. The IR holder did not file evidence.

11. I do not intend to summarise the evidence filed by the opponent in full here. 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

Relevant period

12. The opponent's earlier '821 mark was registered on 7 March 2013 and its earlier '771 mark on 25 March 2013. The contested mark was filed on 12 January 2024. As previously set out, as the earlier marks had been registered for more than five years on the date on which the contested application was filed, Section 6A of the Act applies. It states:

“(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.”

13. As the earlier marks are comparable marks, 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”.

14. The relevant period for proof of use of the opponent’s marks is from 13 January 2019 to 12 January 2024. I note that the relevant territory will be considered the EU from 13 January 2019 to 31 December 2020, and the UK only from 1 January 2021 to 12 January 2024.

PROOF OF USE

Relevant case law

15. 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 C40/01 *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 Bunderversvereinigung 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].

107. The trade mark proprietor bears the burden of proving genuine use of its trade mark: see section 100 of the 1994 Act and *Ferrari* at [73]-[83]. The General Court of the European Union has repeatedly held that genuine use of a trade mark cannot be proved by means of probabilities or suppositions, but must be demonstrated by solid and objective evidence of effective and sufficient use of the trade mark on the market concerned: see e.g. *Case T-78/19 Lidl Stiftung & Co KG v European Union Intellectual Property Office* [EU:C:2020:166] at [25]. It has also repeatedly held that the smaller the commercial volume of the exploitation of the mark, the more necessary it is for

the proprietor to produce additional evidence to dispel any doubts as to the genuineness of its use: see e.g. Lidl at [33]. In *Awareness Ltd v Plymouth City Council* [2013] RPC 24 Daniel Alexander QC sitting as the Appointed Person said:

‘19. For the tribunal to determine in relation to what goods or services there has been genuine use of a mark during the relevant period, it should be provided with clear, precise, detailed and well-supported evidence as to the nature of that use during the period in question from a person properly qualified to know. [...]

22. [...] it is not strictly necessary to exhibit any particular kind of documentation but if it is likely that such material would exist and little or none is provided, a tribunal will be justified in rejecting the evidence as insufficiently solid. That is all the more so since the nature and extent of use is likely to be particularly well known to the proprietor itself. A tribunal is entitled to be sceptical of a case of use if, notwithstanding the ease with which it could have been convincingly demonstrated, the material actually provided is inconclusive. By the time the tribunal [...] comes to take its final decision, the evidence must be sufficiently solid and specific to enable the evaluation of the scope of protection to which the proprietor is legitimately entitled to be properly and fairly undertaken, having regard to the interests of the proprietor, the opponent and, it should be said, the public.”

16. Proven use of a mark which fails to establish that “the commercial exploitation of the marks is real” because the use would not be “viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods or services protected by the mark” is, therefore, not genuine use.

Form of the mark

17. Before I move on to assess if the opponent has shown genuine use, I must first consider if I find the use of the mark as shown in the evidence to be use of the mark as registered.

18. For convenience, I reproduce the registered marks below:

Làv

“The opponent’s earlier ‘821 mark”

Lav

“The opponent’s earlier ‘771 mark”

19. I note that the earlier marks are not used in their registered format at any point in the evidence of use provided by the opponent. Instead, a different figurative mark is used on each page of the catalogues and on the product boxes, in various colour combinations:



The image shows the word 'LAV' in a black, serif font. The letter 'A' is stylized with a pink triangle pointing upwards from its top center.



20. A word-only variant of the mark, “LAV” is also used in some of the catalogues:

about LAV...

Since its establishment in 1994, LAV has taken a leading role in the glassware industry thanks to its focus on technology and innovation. Today, LAV employs 2,000 people, with its sales and marketing office in Istanbul and two production plants built on a 300,000 square meter area in Kütahya. LAV exports its innovative and unique glassware products to 130 countries, including France, Spain and Iran in particular, as well as Brazil, the Philippines and China. It does this

thanks to its extensive distribution and sales network, which reaches even the remotest parts of Turkey. LAV carries out its research and development activities on glassware production technologies at its Teknopark facility, which is described as a "plant within a plant." Built in 2001, the innovation-focused Teknopark has become one of the three largest R&D hubs in the world, creating and developing its own production technology expertise.

21. I remind myself that in *Lactalis McLelland Limited v Arla Foods AMBA*, BL O/265/22, Phillip Johnson, sitting as the Appointed Person, considered the correct approach to the test under s. 46(2). He said:

"13. [...] While the law has developed since *Nirvana* [BL O/262/06], the recent case law still requires a comparison of the marks to identify elements of the mark added (or subtracted) which have led to the alteration of the mark (that is, the differences) (see for instance, T-598/18 *Grupo Textil Brownie v EU*IPO*, EU:T:2020:22, [63 and 64]).

14. The courts, and particularly the General Court, have developed certain principles which apply to assess whether a mark is an acceptable variant and the following appear relevant to this case.

15. First, when comparing the alterations between the mark as registered and used it is clear that the alteration or omission of a non-distinctive element does not alter the distinctive character of the mark as a whole: T-146/15 *Hypen v EUIPO*, EU:T:2016:469, [30]. Secondly, where a mark contains words and a figurative element the word element will usually be more distinctive: T-171/17 *M & K v EUIPO*, EU:T:2018:683, [41]. This suggests that changes in figurative elements are usually less likely to change the distinctive character than those related to the word elements.

16. Thirdly, where a trade mark comprises two (or more) distinctive elements (eg a house mark and a sub-brand) it is not sufficient to prove use of only one of those distinctive elements: T-297/20 *Fashioneast v AM.VI. Srl*, EU:T:2021:432, [40] (I note that this case is only persuasive, but I see no reason to disagree with it). Fourthly, the addition of descriptive or suggestive words (or it is suppose figurative elements) is unlikely to change the distinctive character

of the mark: compare, T-258/13 *Arktis*, EU:T:2015:207, [27] (ARKTIS registered and use of ARKTIS LINE sufficient) and T-209/09 *Alder*, EU:T:2011:169, [58] (HALDER registered and use of HALDER I, HALDER II etc sufficient) with R 89/2000-1 CAPTAIN (23 April 2001) (CAPTAIN registered and use of CAPTAIN BIRDS EYE insufficient).

17. It is also worth highlighting the recent case of T-615/20 *Mood Media v EUIPO*, EU:T:2022:109 where the General Court was considering whether the use of various marks amounted to the use of the registered mark MOOD MEDIA. It took the view that the omission of the word “MEDIA” would affect the distinctive character of the mark (see [61 and 62]) because MOOD and MEDIA were in combination weakly distinctive, and the word MOOD alone was less distinctive still.”

22. I find the word elements “Lav” and “Làv” to be the main distinctive element in the earlier marks; the font of the marks does not have a significant effect on the marks’ distinctiveness as it is fairly generic. The word-only mark, “LAV”, differs from the earlier mark only in the capitalisation of the letters A and V, and in the removal of the accent from the letter A. I do not consider that this capitalisation has any effect on the distinctive character of the mark. While an accent has a specific function, I consider the presence or absence of the accent from the marks to be a minor difference that has little impact on the distinctive character of the mark. I therefore find that the word-only “LAV” mark is an acceptable variant of the use of the marks as registered.

23. The figurative mark used differs from the earlier marks in the font, the capitalisation of the letters A and V and the different colour at the top of the letter A, with a small gap between the colours. The font used in both the earlier marks and the used mark are standard typefaces. Although the earlier marks use a slightly different font, the changes between them are minor and do not alter the distinctive character of the mark. As noted above, the capitalisation of the letters also does not affect the distinctive character of the mark. The earlier marks are both all black, while the used marks are either black with a pink section at the top of the letter A, or white with a black section at the top of the letter A. This change in the colour of the mark does not have a significant impact on the distinctiveness of the mark. I also note that the mark used does not have a clear accent above the letter A. However, my above conclusion

applies, that the presence or absence of an accent has little impact on the distinctive character of the mark.

24. Overall, I consider the variant marks used in the evidence to be acceptable variants of the two earlier marks as registered.

Genuine use

25. In the opponent's witness statement, Mr Karataş states that GÜROK TURİZM VE MADENCİLİK ANONİM SİRKETİ ("the opponent") is the majority shareholder of GÜROK PAZARLAMA VETİCARET A.Ş., as shown in Annex 1. Mr Karataş also states that LAV was established in 1994 and is now the world's fifth largest glassware manufacturer. The company's facilities are based in Turkey but they export glassware products to 130 countries, including the UK and countries within the EU.

26. Annex 2 shows seven product catalogues dated 2018, 2019, 2022 and 2023. The catalogues are in both Turkish and English. They advertise a wide range of glassware and cardboard boxes for said glassware, as well as providing technical information for each piece of glassware. These product catalogues include drinkware, including wine glasses, tea cups & saucers, and mugs, as well as containers with lids and bowls. The catalogues show the below logo at the top of each page:



27. Mr Karataş states that GÜRALLAR PAZARLAMA VE TİCARET A.Ş. was established in 2012. In 2014, GÜROK TURİZM VE MADENCİLİK ANONİM SİRKETİ (the opponent) merged into this company and became the major shareholder. The company then changed its name to GÜROK PAZARLAMA VE TİCARET A.Ş.. Annex 1 is a copy of the Turkish Commercial Registry Gazette outlining the history of the makeup of the companies.

28. In his witness statement, Mr Karataş provides the following turnover figures for the relevant period, relating to exports to the UK.

Year	Turnover in GBP
2018	£4,737,562
2019	£5,146,733
2020	£5,012,328
2021	£4,648,576
2022	£4,589,748
2023 (to end August)	£2,793,588

29. Annex 3 shows a number of invoices dated between 15 October 2020 and 3 February 2022, issued to a variety of customers across the UK. None of the invoices have the earlier marks on them, or acceptable variants of the same. Some invoices are in a foreign language, that I assume to be Turkish, while others are in English. The product codes can be cross referenced with the product catalogues in Annex 2. I note that the product catalogues in Annex 2 show the mark as depicted above on both the catalogues and the product packaging depicted. Annex 6 provides images of the products that relate to each product reference shown in the invoices. The products depicted are all glass drinkware.

30. Annex 4 contains printouts from the ‘about us’ pages from two companies, Neville UK Plc and RINKIT, which Mr Karataş states are businesses that purchase “LAV” branded goods. Both companies appear to market their goods towards other businesses.

31. Annex 5 shows photographs taken at EFG, a wholesale cash & carry store, on 2 November 2022. The photographs show boxes containing glassware with the “LAV” brand on them for sale on the shelves of EFG. Mr Karataş states that EFG is the UK’s largest independent trade-only wholesale business. The products shown in the photographs are all drinkware.

32. The evidence is not without its limitations. For example, there are no details as to the amount spent on marketing the goods in the UK, nor is there any reference to the size of the relevant market..

33. An assessment of genuine use is a global assessment, which includes looking at the evidence as a whole.² The evidence presented demonstrates that goods bearing the opponent's mark were purchased by a number of different consumers across the UK. The invoices show that the sales were geographically widespread in this territory. Whilst I have not been made aware of the market share held by the opponent, taking the turnover figures, evidence of sales and the product brochures into consideration, I am satisfied that the opponent has shown genuine use of its mark on a variety of glassware, including drinkware, containers with lids, and bowls.

Fair specification

34. Having reached the above conclusion, I must determine a fair specification upon which the opponent is entitled to rely, bearing in mind the use that has been demonstrated.

35. In *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited*, BL O/345/10, Mr Geoffrey Hobbs Q.C. as the Appointed Person summed up the law as being:

“In the present state of the law, fair protection is to be achieved by identifying and defining not the particular examples of goods or services for which there has been genuine use but the particular categories of goods or services they should realistically be taken to exemplify. For that purpose the terminology of the resulting specification should accord with the perceptions of the average consumer of the goods or services concerned.”

36. In *Merck KGaA v Merck Sharp & Dohme Corp & Ors* [2017] EWCA Civ 1834 the Court of Appeal set out the proper approach to partial revocation, as follows:

“245. First, it is necessary to identify the goods or services in relation to which the mark has been used during the relevant period.

² *New Yorker SHK Jeans GmbH & Co. KG v OHIM*, Case T-415/09

246. Secondly, the goods or services for which the mark is registered must be considered. If the mark is registered for a category of goods or services which is sufficiently broad that it is possible to identify within it a number of subcategories capable of being viewed independently, use of the mark in relation to one or more of the subcategories will not constitute use of the mark in relation to all of the other subcategories.

247. Thirdly, it is not possible for a proprietor to use the mark in relation to all possible variations of a product or service. So care must be taken to ensure this exercise does not result in the proprietor being stripped of protection for goods or services which, though not the same as those for which use has been proved, are not in essence different from them and cannot be distinguished from them other than in an arbitrary way.

248. Fourthly, these issues are to be considered having regard to the perception of the average consumer and the purpose and intended use of the products or services in issue. Ultimately it is the task of the tribunal to arrive at a fair specification of goods or services having regard to the use which has been made of the mark.

249. This approach does strike an appropriate balance. It gives effect to the clear intention of the EU legislature that marks must actually be used or, if not used, be subject to revocation. [...] It is also fair to proprietors for it does not require a proprietor to prove that he has used his mark in relation to all possible variations of the goods or services covered by its registration but only those which are sufficiently distinct to constitute coherent categories or subcategories. I am also satisfied that it gives appropriate protection to the legitimate interest of a proprietor in being able in the future to extend his range of goods or services within the scope of the terms describing the goods or services for which its mark is registered.”

37. In *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool) & Ors* [2016] EWHC 3103 (Ch) at [47], the late Carr J pointed out that it is not the task of the court to describe the use made by the trade mark proprietor in the narrowest possible terms unless that is what the average consumer would do; for

example, in *Pan World Brands v Tripp Ltd (Extreme Trade Mark)* [2008] RPC 2 it was held that use in relation to holdalls justified a registration for luggage generally.

38. It is also the case that the purpose or intended use of a product is vital in determining whether goods are a coherent subcategory. In *Polfarmex S.A. v EUIPO*, Case T-677/19, EU:T:2020:424, the General Court said:

“116. As regards the question whether goods are part of a coherent subcategory which is capable of being viewed independently, it is apparent from the case-law that, since consumers are searching primarily for a product or service which can meet their specific needs, the purpose or intended use of the product or service at issue is vital in directing their choices. Consequently, since consumers do employ the criterion of the purpose or intended use before making any purchase, it is of fundamental importance in the definition of a subcategory of goods or services (judgments of 13 February 2007, *RESPICUR*, T-256/04, EU:T:2007:46, paragraph 29, and of 16 May 2013, *Aleris v OHIM – Carefusion 303 (ALARIS)*, T-353/12, not published, EU:T:2013:257, paragraph 22). In contrast, the nature of the goods at issue and their characteristics are not, as such, relevant to the definition of subcategories of goods or services (see judgment of 18 October 2016, *August Storck v EUIPO – Chiquita 25 Brands (Fruitfuls)*, T-367/14, not published, EU:T:2016:615, paragraph 32 and the case-law cited).”

39. Having reviewed the evidence, I am satisfied that the use of the marks has been established for a variety of glassware, including drinkware, containers with lids, and bowls.

40. I am satisfied that the use of the marks has been established for glass household or kitchen containers. However, the opponent’s specification includes household or kitchen utensils and containers. I have not been shown any evidence for household or kitchen utensils. I am therefore satisfied that genuine use has been shown for ‘household or kitchen containers’.

41. I am satisfied that the use of the marks has been established for glass tableware. However, the opponent’s specification includes glassware, porcelain and earthenware not included in other classes. I have not been shown any evidence for porcelain or

earthenware. I am also not convinced that use for glassware at large has been shown. I am therefore satisfied that genuine use has been shown for 'glass tableware not included in other classes'.

42. I am satisfied that the use of the marks has been established for glass drinkware and bowls. However, the opponent's specification includes glasses, dishes, jars, cookie jars, cups, trays, egg cups, coffee cups, saucepans, carafes, cake molds, teapots, tableware (other than knives, forks and spoons) made of glass and porcelain, namely, bowls, mugs, plates, salt and pepper shakers, gravy boats, jugs and vases. I have not been shown any evidence for dishes, jars, cookie jars, trays, egg cups, saucepans, carafes, cake molds, teapots, tableware made of porcelain, plates, salt and pepper shakers, gravy boats, jugs or vases. I am therefore satisfied that genuine use has been shown for 'glasses, cups, coffee cups and tableware (other than knives, forks and spoons) made of glass, namely, bowls and mugs'.

43. The opponent's specification includes 'unworked or semi-worked glass (except glass used in building)'. I have not been shown any evidence for unworked glass. I have no evidence as to what 'semi-worked glass' refers to. With no submissions to the contrary, my understanding is that both of these terms relate to glass that is not in its final form. None of the evidence shows glass in its non-final form. I therefore do not consider that the evidence shows that the earlier marks have been used in relation to 'unworked or semi-worked glass (except glass used in building)'.

44. There is no evidence that the earlier marks have been used in relation to the following goods and services:

Class 21: combs and sponges; brushes (except paintbrushes); brush-making materials; articles for cleaning purposes; steel wool; statuettes, statues and works of art of glass and porcelain.

45. As such, fair specifications for the first, second and third earlier marks are as follows:

Làv

(“the opponent’s earlier ‘821 registration”)

Class 21: Household or kitchen containers; glass tableware not included in other classes; glasses, cups, coffee cups and tableware (other than knives, forks and spoons) made of glass, namely, bowls and mugs.

Lav

(“the opponent’s earlier ‘771 registration”)

The following goods are relied on for this opposition:

Class 21: Household or kitchen containers; glass tableware not included in other classes; glasses, cups, coffee cups and tableware (other than knives, forks and spoons) made of glass, namely, bowls and mugs.

Section 5(2)(b)

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

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

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark”.

Section 5A

47. Section 5A of the Act is as follows:

“5A 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.”

The principles

48. The following principles are gleaned from the decisions of the Court of Justice of the European Union (“CJEU”) in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P.

The principles

- (a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;
- (b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;
- (c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;
- (d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;
- (e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;
- (f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a

composite mark, without necessarily constituting a dominant element of that mark;

- (g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;
- (h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;
- (i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;
- (j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;
- (k) if the association between the marks creates a risk that the public 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

49. In comparing the respective specifications, all relevant factors should be considered, as per *Canon*, where the CJEU stated at paragraph 23 of its judgment:

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary.”

50. 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.

51. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the General Court (“GC”) stated that:

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

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

“... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless, the principle should not be taken too far. Treat was decided the way it was because the ordinary and natural, or core, meaning of 'dessert sauce' did not include jam, or because the ordinary and natural description of jam was not 'a dessert sauce'. Each involved a straining of the relevant language, which is incorrect. Where

words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question."

53. Further, in *Kurt Hesse v OHIM*,³ the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v OHIM*,⁴ the GC stated that "complementary" means:

"...there is close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking."

54. With this in mind, the goods for comparison are as follows:

Opponent's goods:⁵	IR holder's contested goods and services:
<i>Class 21: Household or kitchen containers; glass tableware not included in other classes; glasses, cups, coffee cups and tableware (other than knives, forks and spoons) made of glass, namely, bowls and mugs.</i>	<i>Class 21: Industrial containers of glass for packaging; glass tableware; unworked or semi-worked glass except construction glass for industrial packaging containers; boxes of glass; glass vials (containers); glasses (receptacles); jugs (containers).</i>

55. In its written submissions, the IR holder admits that, subject to the provision of the proof of use requested, the goods in question are identical or similar. I acknowledge this submission. I agree that at least some of the contested goods are identical to the opponent's goods that have been shown to have genuine use of the earlier marks. For

³ Case C-50/15 P

⁴ Case T-325/06

⁵ The goods for each of the opponent's earlier registrations are identical. I have not repeated the goods twice in this table for clarity.

reasons which will later become apparent, I will therefore proceed to assess the likelihood of confusion on the basis that at least some of the goods are identical.

56. I will return to address which goods are identical and to divide the goods by similarity level, if this becomes necessary.


Comparison of marks

57. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

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

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

59. The respective trade marks are shown below:

The opponent's earlier marks	The IR holder's contested mark
<p>1. Làv <i>"The opponent's earlier '821 registration"</i></p> <p>2. Lav <i>"The opponent's earlier '771 registration"</i></p>	

60. In its statement of grounds in respect of both earlier marks, the opponent submits that "the mark applied for AV (stylised mark) is highly similar to the trade mark Lav [Làv] (stylised mark)".

61. In its counterstatement, the IR holder denies that the contested mark would be seen as an "AV" mark and states that the marks "are self-evidently dissimilar in visual, phonetic and conceptual terms". In its written submissions, the IR Holder submits that the contested mark is a distinctive mark with no obvious letter sequence or phonetic sound.

Overall impression

62. The opponent's earlier '821 and '771 registrations are figurative marks consisting of the element "Lav" or "Làv" written in a simple font and a black colour. The word element of each mark is dominant.

63. The contested mark is a figurative mark comprising four curved lines interconnected to form a diamond-like shape with the lines extending out of the diamond, presented in black. This is the only element and it dominates the mark.

Visual comparison

64. The opponent's earlier marks consist of the element "Lav" or "Làv". The contested mark consists of four curved lines interconnected to form a diamond-like shape with the lines extending out of the diamond.

65. The opponent submits that the contested mark will be viewed by the consumer as a stylised A and V interconnected. It is my view that this is unlikely, however, for completeness, I consider that some consumers may view the mark this way, although others may not recognise any letters in the mark.

66. If "AV" is seen by consumers within the contested mark, this acts as a point of visual similarity between the marks. The black colour of both marks also acts as a point of visual similarity. However, the difference in stylisation of the letters "AV" in each mark, and the addition of the letter L at the beginning of the earlier marks will act as points of visual difference, which will not be overlooked, particularly as the additional letter is at the beginning of the mark.⁶ The earlier '821 mark also includes an accent above the letter A, which acts as another point of visual difference. Overall, for consumers who read the contested mark as containing the letters A and V, I consider that the marks have a low visual similarity.

67. Where no letters are seen in the contested mark, the only similarity between the marks is the colour of the marks, which plays a minimal role in their overall impression. Consequently, I consider that in this case the marks are visually dissimilar.

Aural comparison

68. The opponent's earlier '771 mark consists of the word "Lav". This will be pronounced as one syllable. The opponent's earlier '821 mark consists of the same word with a grave accent above the letter A. Consumers may understand this accent to mean that the pitch of the letter should be changed, or that more stress should be put on that letter, or they may not change the pronunciation of the word as a result of the accent. Either way, both marks will be pronounced as 'lav'.

⁶ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

69. As noted above, I will consider the possibility that some consumers will read the contested mark as stylised versions of the letters A and V connected together, as submitted by the opponent. In this case, these consumers will pronounce the mark as “A-V”. The sounds “lav” and “A-V” are dissimilar, therefore I consider that, for these consumers, the marks are aurally dissimilar.

70. For consumers that do not see any letters in the contested mark, it will have no aural nature. The marks will therefore be aurally dissimilar.

Conceptual comparison

71. For a conceptual message to be relevant, it must be capable of immediate grasp by the average consumer. This is highlighted in numerous judgements of the GC and the CJEU including *Ruiz Picasso v OHIM*.⁷ The assessment must be made from the point of view of the average consumer.

72. The earlier ‘771 mark consists of the word “Lav”, which is not a dictionary word. Some consumers could view this as a shortening of a known word, such as lavatory, but in the context of the goods I do not consider that this is likely. The earlier ‘821 mark consists of the word “Làv”, which is not a dictionary word. Due to the accent above the letter A, consumers may view this as a foreign word, but they will not understand the meaning of it. Consumers will therefore attribute no meaning to the earlier marks.

73. Whether consumers see the contested mark as being a figurative shape or containing the letters A and V, they will attribute no conceptual meaning to the mark.

74. As neither mark has a meaning that is immediately graspable to the average consumer, the marks are conceptually neutral.

Average consumer and the purchasing act

75. As the case law above indicates, it is necessary to determine who the average consumer is for the respective parties’ goods. I must then determine the manner in which the goods are likely to be selected by the average consumer. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership*

⁷ [2006] e.c.r.-I-643; [2006] E.T.M.R. 29

(Trading) Limited, U Wear Limited, J Fox Limited, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

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

76. In its written submissions, the IR holder submits that the average consumer of the goods in class 21 is likely to be the general public, paying the lowest level of attention.

77. I agree with the IR holder’s submission that some of the goods at issue will be purchased by the general public. However, some of the goods, namely ‘industrial containers of glass for packaging’ and ‘unworked or semi-worked glass except construction glass for industrial packaging containers’ will clearly be purchased solely by professionals in industrial settings. Additionally, the tableware goods will also be purchased by professionals for businesses such as restaurants, schools and hotels. I therefore consider that there will be two groups of consumers: members of the general public and professionals. I consider that members of the general public will pay an average degree of attention and professionals will pay a slightly above average degree of attention during the purchasing process.

78. The goods and services at issue will be purchased through catalogues, online or in-person in homeware or wholesale stores. Although I do not discount aural considerations as advice may be sought from a sales advisor, I consider that visual considerations will play a larger role as the consumer will see the products in the catalogue, in the store or on the website.

Distinctive character of the earlier trade mark

79. 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).”

80. 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, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use that has been made of it.

81. The earlier marks are invented words which have no evident meaning and do not allude to or describe the goods at issue. Therefore, I am of the view that the earlier marks are inherently distinctive to a high degree.

82. As the opponent has filed evidence of use of their marks, I will consider whether this evidence demonstrates enhanced distinctiveness of the marks. The turnover figures in the table provided in Mr Karataş’s witness statement are significant, although there is no indication as to the market share held by the opponent. There are also no

details regarding the amount spent on advertising the goods. Overall, I do not consider that the distinctiveness of the earlier marks has been enhanced to a higher degree than the inherent distinctiveness, which as mentioned is already high.

GLOBAL ASSESSMENT – Conclusions on Likelihood of Confusion

83. 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 (or services) and vice versa (*Canon* at [17]). It is necessary to keep in mind the distinctive character of the opponent's trade mark, the average consumer of the goods and the nature of the purchasing act. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind (*Lloyd Schuhfabrik* at [26]).

84. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods down to the responsible undertakings being the same or related.

85. Earlier in this decision, I found that some of the goods were identical. I found all the marks to have a low visual similarity or to be visually dissimilar. I found the marks to be aurally dissimilar, and to be conceptually neutral. I found the opponent's earlier registrations to possess a high level of inherent distinctive character for the relevant goods. I identified the average consumer to be in two groups: members of the general public, paying an average degree of attention, and professionals, paying a slightly above average degree of attention. I found that the goods would be selected primarily by visual means.

86. As noted above, the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind (*Lloyd Schuhfabrik* at [26]).

87. Firstly, if the consumer does not view the contested mark as containing the letters A and V, I note that the only similarity between the marks will be the black colour. This slight overlap is not enough for any consumer to mistake one mark for the other. There will therefore be no direct confusion between the marks.

88. If the consumer does view the contested mark as containing the letters A and V, there is a slight overlap in the visual nature, but there are still significant differences between the marks as the earlier marks contain a letter L, which is prominent and is at the beginning of the marks, and the contested mark is heavily stylised, creating a significant difference between the marks visually. It is my view that the aural and visual differences would not go unnoticed or be misremembered by consumers paying an average degree of attention, even considering the identity of the goods and the high distinctiveness of the earlier mark, and I therefore do not consider it likely that a consumer would mistake one mark for the other. I do not find a likelihood of direct confusion between the contested mark and either of the opponent's earlier marks.

89. I will therefore proceed to consider whether there is a likelihood of indirect confusion, whilst reminding myself that, as James Mellor QC sitting as the Appointed Person pointed out in *Cheeky Italian Ltd v Sutaria* (O/219/16) at [16], "a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion".

90. In *L.A. Sugar Limited v By Back Beat Inc*, BL O/375/10, 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, 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)."

91. 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 in which indirect confusion occurs.

92. If it is noticed by the consumer in the contested mark, the common element between the marks is the use of the letters A and V. The average consumer would not see this common element as being so strikingly distinctive that no other entity would be using it. I consider that a consumer who is aware of any of the opponent's earlier marks would note the removal of the first letter in the contested mark, as well as the stylisation of the contested mark. I do not see any logical reason for the consumer to conclude that the contested mark is another brand of the owner of either of the earlier marks. I do not even consider it likely that the earlier marks would be brought to mind

by the use of the later mark, but even if this were the case, this would be mere association and does not equate to a likelihood of indirect confusion.

93. Taking all of this into account, I do not consider there to be a likelihood of indirect confusion between the contested mark and any of the opponent's earlier marks.

94. I have considered the possibility of confusion based on identical goods and have found none. As a result, I will not return to compare the goods any further, as it would not alter my finding of no likelihood of confusion.

Final Remarks

95. The opposition under section 5(2)(b) fails in its entirety. Subject to any successful appeal, the application will proceed to registration in respect of all of the goods applied for.

COSTS

96. The IR holder has achieved success in these proceedings and is therefore entitled to a contribution towards its costs. In the circumstances, I award the IR holder the sum of £900 as a contribution towards the cost of the proceedings, in accordance with Tribunal Practice Notice 1/2023. The sum is calculated as follows:

Considering the TM7 and statement of grounds, and preparing and filing the TM8 and counterstatement:	£250
Considering the other side's evidence:	£300 ⁸
Filing submissions-in-lieu:	£350
Total:	£900

97. I therefore order GÜROK TURIZM VE MADENCILIK ANONIM SIRKETI to pay AVEPA AG the sum of £900. The above sum should be paid within twenty-one days

⁸ I have awarded below scale costs for this as the IR holder did not file any evidence of their own.

of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 29th day of October 2025

K HARBACH

For the Registrar