

O/1162/25

CONSOLIDATED PROCEEDINGS

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NOS. UK00003799544 AND UK00003910708
BY AMMA MENSAH AND KWAKU MENSAH
TO REGISTER THE FOLLOWING TRADE MARKS:**

Reign Rum

IN CLASS 33

AND

Reign Forest

IN CLASSES 16, 25, 30, 32, 33, 35, 40, 41 AND 43

**AND IN THE MATTER OF OPPOSITIONS THERETO
UNDER NOS. 436825 AND 442743
BY REIGN BEVERAGE COMPANY LLC**

BACKGROUND AND PLEADINGS

1. On 15 June 2022, Amma Mensah and Kwaku Mensah (“the applicants”) applied to register the mark **Reign Rum**, which was given application no. 3799544 (“the First Application”). The First Application was published for opposition purposes on 15 July 2022 and registration is sought for the following goods:

Class 33 Rum [alcoholic beverage].

2. On 12 May 2023, the applicant applied to register the mark **Reign Forest**, which was given application no. 3910708 (“the Second Application”). The Second Application was published for opposition purposes on 26 May 2023 and registration is sought for the goods and services set out in Annex 1 to this decision.

3. On 11 October 2022 and 29 August 2023 respectively, the applications were opposed by Reign Beverage Company LLC (“the opponent”) based upon section 5(2)(b) of the Trade Marks Act 1994 (“the Act”).¹ In respect of the opposition against the First Application, the application is opposed in full and the opponent relies upon the following trade marks:

REIGN

UKTM no. 3393954

Filing date 23 April 2019; registration date 20 September 2019

Priority date: 16 April 2019 (EU)

(“the First Earlier Mark”)

REIGN ENERGY

UKTM no. 3383675

Filing date 15 March 2019; registration date 2 August 2019

Priority date: 17 September 2018 (US)

(“the Second Earlier Mark”)

¹ The opponent also originally relied upon sections 5(3) and 5(4)(a) of the Act, but these were deemed withdrawn after the opponent elected not to file any evidence in support of those grounds.

REIGN FUEL

UKTM no. 3393963

Filing date 23 April 2019; registration date 27 September 2019

Priority date: 30 October 2018 (US)

("the Third Earlier Mark")

4. In respect of the opposition against the Second Application, the application is partially opposed in relation to all of the goods in classes 25, 30, 32 and 33. The opponent relies upon the First, Second and Third Earlier Marks, as well as the following marks:

REIGN

UKTM no. 3456076

Filing date 7 January 2020; registration date 8 August 2020

Priority date: 8 July 2019 (US)

("the Fourth Earlier Mark")

REIGN PERFORMANCE

UKTM no. 3393966

Filing date 23 April 2019; registration date 27 September 2019

Priority date: 30 October 2018 (US)

("the Fifth Earlier Mark")

REIGN

UKTM no. 3793074

Filing date 27 May 2022; registration date 30 December 2022

Priority date: 2 December 2021 (South Africa)

("the Sixth Earlier Mark")

5. The goods and services relied upon by the opponent in classes 25, 32 and 35 are set out in Annex 2 to this decision. The opponent claims that the marks are similar and the goods and services are identical or similar, with the result that there is a likelihood of confusion.

6. The applicant filed counterstatements denying the grounds of opposition.

7. Neither party filed evidence.

HEARING AND REPRESENTATION

8. A hearing took place before me on 30 October 2025, by video conference. The applicant was represented by Mr Julius Stobbs of Stobbs and the opponent was represented by Thomas Hooper of Bird & Bird LLP. Both parties filed skeleton arguments in advance of the hearing.

RELEVANCE OF EU LAW

9. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

DECISION

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

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

(a)...

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

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

11. 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.”

12. Given the earlier filing/priority dates, the trade marks relied upon by the opponent qualify as earlier trade marks pursuant to section 6 of the Act. As the earlier marks had not completed their registration process more than 5 years prior to the filing date of the applications in issue, they are not subject to the use provisions in section 6A of the Act. The opponent can, therefore, rely upon all goods and services identified.

13. The following principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P:

(a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;

(f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a greater degree of similarity between the marks, and vice versa;

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

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

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

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

Comparison of goods and services

14. The competing goods and services can be found in Annexes 1 and 2 to this decision.

15. 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 for Lernsysteme v OHIM – Educational Services* (ELS) [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark.”

16. When making the comparison, all relevant factors relating to the goods/services in the specifications should be taken into account. In the judgment of the Court of Justice of the European Union (“CJEU”) in *Canon*, Case C-39/97, the court stated at paragraph 23 that:

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

17. Guidance on this issue has also come from Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, where he identified the factors for assessing similarity as:

(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.

18. In *Absolut Company Aktiebolag v Dongguan Topson Electronic Technology Co. Ltd*, BL O/0488/25, Phillip Johnson, as the Appointed Person, identified the following considerations relevant to the comparison of alcoholic beverages and other drinks:

“13. First, the fact that spirits are mixed with soft-drinks (mixers) does not make the products complimentary (*Yilmaz*, [55]; *Wesergold*, [40]; *CHIC*, [53 to 55]), but it does mean there is a partial (but not significant) overlap between spirits and soft drinks (*Wesergold*, [32 and 33]).

14. Second, soft-drinks, water and (possibly) beer are drunk to quench the thirst (*Yilmaz*, [54]; *Wesergold*, [35 and 36]; *ROSALIA DE CASTRO*, [31]; the *CHIC* case takes a different view that low alcoholic drinks are not consumed to quench thirst, *CHIC*, [44]), but in any event spirits are not consumed to quench thirst (*Yilmaz*, [54]; *Wesergold*, [35 and 36]).

15. Thirdly, the methods of production for alcoholic drinks (and between alcoholic drinks and non-alcoholic drinks) differ and this is relevant to the similarity between them: *Mezzopane*, [64 and 69]; *Bodegas*, [29]; *Yilmaz*, [54]. Likewise, products which are processed versions of each other might be more similar (eg wine and Brandy): *Vanhove*, [87].

16. Fourthly, the differences between the colour, aroma and taste of two alcoholic drinks suggests to consumers that they are different: *Mezzopane*, [65]; *Yilmaz*, [54].

17. Finally, the alcoholic content of the goods is a very relevant factor in determining the similarity of the goods: *Bodegas*, [32]; *Wesergold*, [31]; *CHIC*, [40 and 41]; *FLÜGEL*, [84]. However, a non-alcoholic version of an equivalent alcoholic drink is likely to be highly similar to it: *CERVISIA*, [20]. Nevertheless, the Grand Board highlighted that a drink's alcoholic content is only a factor in the assessment of similarity and is not determinative: *ZORAYA*, [68].”

The First Application

19. The specification of the First Application contains only one term: “Rum [alcoholic beverage]”. There was some suggestion by Mr Hooper that this would include low-alcohol drinks. I have no evidence before me that a low-alcohol rum exists; whilst I am aware that there are various non-alcoholic equivalents of spirits available on the market, I am not aware of the same being true for low-alcohol equivalents. Consequently, I am not prepared to find that the term in the First Application would include low-alcohol goods. I also do not consider that the term would cover rum-based beverages (such as cocktails with a rum base). In my view, the proper interpretation of this term is that it covers only rum itself.

20. With that in mind, my view is that the goods will overlap in method of use to the extent that they are all drinkable liquids. There will also be some overlap at a very general level in nature for the same reason, although the taste, colour and ingredients will result in very clear differences. They also differ in the alcoholic content of one, compared to the absence of alcohol in the other. Although alcoholic drinks may be consumed for refreshment purposes, they are mostly consumed at least partly for the effect of the alcohol. The purpose of the goods may, therefore, be somewhat similar, but are different in key respects. There is a further point of difference in the context of the opponent's fitness/energy drinks, which have the specific purpose of boosting the consumer's energy levels or to replenish after exercise; this purpose is absent from

the applicant's goods. I do not consider there to be any meaningful competition, because commercial choices are typically between different types of alcoholic drinks, rather than between an alcoholic drink or a soft drink/fitness drink. I do not consider there to be any complementarity, because although some alcoholic beverages may be drunk with the applicant's soft drinks/fitness/energy drinks, the average consumer would not expect the same undertaking to be responsible for the goods.²

21. Whilst there may be an overlap in trade channels at a very general level, as all of the goods can be purchased through supermarkets and other retail outlets, they are unlikely to be sold in the same aisles or in close proximity to each other. Mr Hooper submitted that there are well known brands which make, for example, cocktails based upon a soft drink which results in an overlap in trade channels. However, I have no evidence of this before me and I have no evidence before me that it is common for producers of rum also to produce soft drinks/fitness/energy drinks, nor do I consider it likely. Taking all of this into account, I find the goods to be dissimilar.

22. In reaching this conclusion, I have considered whether (although not an argument specifically raised by the opponent) the term "soft drinks" in the specifications of the Second and Third Earlier Marks is broad enough to cover non-alcoholic version of rum. In my view, it is not. *Collins Dictionary* defines the term "soft drink" as "a cold, non-alcoholic drink such as lemonade or fruit juice, or a fizzy drink". This accords with my own understanding of the term and is, in my view, the meaning that would be understood by the average consumer. A soft drink, to my understanding, is typically a long, cold drink. Bearing in mind that terms within specifications should be given their ordinary and natural meaning, I do not consider that the average consumer would understand the meaning of "soft drinks" to extend to cover non-alcoholic versions of rum.³

² *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06

³ *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch)

The Second Application

Class 25

Clothes; Clothing; Swaddling clothes; Baby clothes; Beach clothes; Nappy pants [clothing]; Denims [clothing]; Jackets [clothing]; Shorts [clothing]; Work clothes; Drawers [clothing]; Drawers as clothing; Clothes for sports; Aprons [clothing]; Jackets (Stuff -) [clothing]; Stuff jackets [clothing]; Clothes for sport; Linen clothing; Headbands for clothing; Headbands [clothing]; Kerchiefs [clothing]; Gloves as clothing; Gloves [clothing]; Bottoms [clothing]; Capes (clothing); Furs [clothing]; Trunks being clothing; Maternity clothing; Jerseys [clothing]; Babies' pants [clothing]; Clothing layettes; Layettes [clothing]; Clothing for leisure wear; Woolen clothing; Gabardines [clothing]; Oilskins [clothing]; Bodies [clothing]; Clothing for babies; Hoods [clothing]; Ready-to-wear clothing; Garments for protecting clothing; Tops [clothing]; Belts for clothing; Belts [clothing]; Collars [clothing]; Playsuits [clothing]; Veils [clothing]; Knitwear [clothing]; Corsets [clothing, foundation garments]; Paper hats for use as clothing items; Silk clothing; Fabric belts [clothing]; Mitts [clothing]; Hats (Paper -) [clothing]; Paper hats [clothing]; Beach clothing; Money belts [clothing]; Belts (Money -) [clothing]; Braces for clothing; Chaps (clothing); Ready-made clothing; Embroidered clothing; Casual clothing; Knitted clothing.

23. The specification of the Fourth Earlier Mark contains the terms “clothing” and “headwear”. These terms in the applicant’s specification all fall within the broader terms in the specification of the Fourth Earlier Mark and are, therefore, identical on the principle outlined in *Meric*.

Gussets for underwear [parts of clothing]; Pockets for clothing; Gussets for bathing suits [parts of clothing].

24. These terms are all parts of clothing. They would be sold to manufacturers of clothing, meaning that there would be different users when compared to completed clothing articles. The method of use and purpose of the goods is clearly different, with the applicant’s goods being for the purposes of making clothing, requiring stitching and fitting as part of a complete garment, and the opponent’s goods being for the

purposes of warmth/protection and being ready-to-wear. I have no evidence before me to suggest that there would be an overlap in trade channels, and I am not aware that businesses that sell clothing also sell parts for the same. There is no complementarity as one would not expect the same undertaking to be responsible for both, nor is there any competition given the differing purposes. My primary finding would have been that the goods are dissimilar. However, I have borne in mind Mr Hooper's submission regarding the applicant's pleadings i.e. that it was not denied that the goods and services were similar in respect of the opposition against the Second Application. Mr Stobbs suggested that I should proceed on the basis that the similarity of the goods was in issue, as neither party would be prejudiced by that, given that both have argued the point throughout the proceedings. However, for reasons that will become clear, nothing will turn on this. Consequently, I will proceed on the basis that there is a low degree of similarity (which is the opponent's best possible case).

Class 30

Beverages (Coffee-based -); Coffee-based beverages; Chocolate-based beverages; Beverages (Chocolate-based -); Beverages made of tea; Beverages made with chocolate; Beverages made from chocolate; Beverages made of coffee; Beverages made from coffee; Prepared coffee beverages; Prepared coffee and coffee-based beverages; Chocolate-based beverages with milk; Beverages made from cocoa; Tea beverages (Non-medicated -); Tea-based beverages; Beverages (Tea-based -); Tea beverages; Beverages (Cocoa-based -); Cocoa-based beverages; Chocolate beverages.

25. These are all types of non-alcoholic beverages. They will, therefore, overlap in purpose (being to quench thirst) with the specifications of the First, Second, Third and Fifth Earlier Marks which all contain types of soft drink, albeit I recognise that the opponent's fitness/energy drinks are likely to have an added purpose relating to sport/fitness performance. The method of use will overlap, and the user will be the same. There will be some overlap in nature, by virtue of all of these goods being non-alcoholic drinks. I also recognise that, whilst it is common for the applicant's goods to be served warm (whereas the opponent's would not), there are goods that fall within

the applicant's specification which could also be served cold (such as iced tea/coffee). Notwithstanding that, I recognise that the nature of the goods will not be the same and the distance will be even greater where there are specific sports/fitness enhancing properties in the context of the opponent's fitness beverages. There may be a degree of competition, with competitive choices being made between different types of non-alcoholic beverage. All of these goods can be sold through the same trade channels. In my view, the goods are similar to at least a medium degree.

Herbal preparations for making beverages; Cocoa preparations for use in making beverages; Preparations for making beverages [chocolate based]; Preparations for making beverages [coffee based]; Preparations for making beverages [tea based]; Herbal flavourings for making beverages; Cocoa for use in making beverages; Preparations for making beverages [cocoa based]; Chocolate flavoured beverage making preparations; Chocolate extracts for the preparation of beverages; Powdered preparations containing cocoa for use in making beverages; Chocolate essences for the preparation of beverages; Fruit flavourings for food or beverages, except essences; Flavorings for beverages; Flavourings of tea for food or beverages.

26. These goods are one step further removed because they are preparations for making beverages, rather than beverages themselves. Consequently, I find the opponent's best case to be the "retail and wholesale services in the field of beverages" in the specification of the Sixth Earlier Mark. In my view, the words "in the field of beverages" is not limited to retail/wholesale of only ready-to-drink beverages but would also include retail/wholesale of preparations for making beverages. Consequently, the trade channels and users are the same and there is complementarity. As a result, I find the goods and services to be similar to a medium degree.

Class 32

Preparations for making non-alcoholic beverages; Preparation for making non-alcoholic beverages; Syrups and other non-alcoholic preparations for making beverages; Non-alcoholic syrups for making beverages; Syrups for making non-alcoholic beverages; Extracts for making non-alcoholic beverages; Essences for making non-alcoholic beverages; Non-alcoholic essences for making beverages;

Syrups for making beverages; Non-alcoholic fruit extracts used in the preparation of beverages; Extracts for making beverages; Dilutable preparations for making beverages; Syrups for making whey-based beverages; Syrup for making beverages; Non-alcoholic essences for making non-alcoholic beverages, not in the nature of essential oils; Syrups for beverages; Essences for making beverages; Syrups for making fruit-flavored drinks; Powders used in the preparation of fruit-based beverages; Syrups used in the preparation of soft drinks.

27. These are all preparations for making beverages. For the same reasons discussed above, I find that these would overlap with the opponent's "retail and wholesale services in the field of beverages" in the specification of the Sixth Earlier Mark. I find the goods and services to be similar to a medium degree.

Non-alcoholic beverages; Beverages (Non-alcoholic -); Cordials (non-alcoholic beverages); Non-alcoholic malt beverages; Fruit beverages (non-alcoholic); Squashes [non-alcoholic beverages]; Non-alcoholic carbonated beverages; Non-alcoholic drinks; Fruit-based beverages; Root beers, non-alcoholic beverages; Kvass [non-alcoholic beverages]; Non-alcoholic malt drinks; Non-alcoholic beverages containing fruit juices; Alcohol free beverages; Non-alcoholic fruit drinks; Non-alcoholic beverages containing vegetable juices; Non-alcoholic flavored carbonated beverages; Smoothies [non-alcoholic fruit beverages]; Non-alcoholic fruit juice beverages; Fruit juice beverages (Non-alcoholic -); Carbonated non-alcoholic drinks; Sherbets [beverages]; Sarsaparilla [non-alcoholic beverage]; Fruit-flavored beverages.

28. All of these terms either encompass the opponent's "soft drinks" or are a type of soft drink. Consequently, they are identical on the principle outlined in *Meric*.

Non-alcoholic beverages flavored with tea; Non-alcoholic beverages with tea flavor; Non-alcoholic beverages flavoured with tea; Non-alcoholic soda beverages flavoured with tea.

29. These are all terms which, in my view, would include types of iced tea. In my view, this would be considered a type of soft drink and these terms are, therefore, identical on the principle outlined in *Meric* to the opponent's "soft drinks".

Non-alcoholic beer flavored beverages; Non-alcoholic beverages flavored with coffee; Non-alcoholic beverages flavoured with coffee; Non-alcoholic honey-based beverages; Honey-based beverages (Non-alcoholic -); Non-alcoholic malt free beverages [other than for medical use]; Non-alcoholic dried fruit beverages; Sorbets [beverages]; Frozen fruit-based beverages; Mixes for making sorbet beverages.

30. These are all beverages which, in my view, are all non-alcoholic drinks which would not strictly fall within the meaning of the term “soft drink”. However, they would overlap in nature, method of use and purpose. There may also be a degree of competition. The users will plainly be the same. Consequently, I find there to be at least a medium degree of similarity with the opponent’s “soft drinks”.

Beer-based beverages.

31. The purpose of the beer-based beverages is at least partially in relation to the intoxicating effects of alcohol. This is absent in the opponent’s goods. The method of use and nature will overlap to the extent that they are all drinkable liquids. However, the nature will differ in the alcoholic content of one and the absence of alcohol in the other. Further, the opponent’s energy/fitness drinks will have an additional purpose of enhancing sports performance, which will make the purpose and nature even more distant. There may be an overlap in trade channels to the extent that supermarkets and other retailers will sell all of the goods, but they will be in different parts of those retailers. There is no competition or complementarity. I find the goods to be dissimilar.

32. The opponent’s best case, therefore, is in relation to the retail services in the specification of the Sixth Earlier Mark. Mr Stobbs submitted that the term “beverages” would not include alcoholic drinks. I disagree. I bear in mind that terms within specifications should not be given a wide construction but should be attributed their core meaning.⁴ I consider the core meaning of the word “beverage” to be “a drink”; this could be either alcoholic or non-alcoholic. Consequently, I find there to be an overlap

⁴ *Avnet Incorporated v Isoact Limited* [1998] FSR 16

in trade channels and user; I also consider there to be complementarity. The goods and services are similar to a medium degree.

Class 33

33. All of the goods in this class are either alcoholic beverages or preparations for making alcoholic beverages. For the same reasons given above, I find there to be a medium degree of similarity with the retail services in the specification of the Sixth Earlier Mark.

The average consumer and the nature of the purchasing act

34. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purposes of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods and services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97.

35. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

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

36. The average consumer for the goods and services will be a member of the general public (who is over the age of 18 in the case of alcoholic goods) or a professional in the field of beverage production. The cost of the goods is likely to vary, and they may be purchased reasonably frequently. The average consumer is likely to consider

factors such as flavour, sugar content, alcohol content and/or origin when purchasing the beverage-related goods. The average consumer is likely to consider factors such as fit, style and aesthetics when purchasing the class 25 goods. Factors such as location, customer services standards and range of products are likely to be considered when purchasing the services. Taking all of this into account, I consider that a medium degree of attention is likely to be paid during the purchasing process, although I recognise that it may be slightly higher for professional users (although still not at the highest end of the scale).

37. The goods are likely to be self-selected from the shelves of a retail outlet (or online equivalent) or following perusal of a drinks menu or bottles behind a bar. The services are likely to be purchased following perusal of signage at physical premises, on websites or in advertisements. Consequently, I find that visual considerations are likely to dominate the purchasing process. However, given that orders may be placed aurally, and word-of-mouth recommendations may play a part, I do not discount an aural component.

Comparison of trade marks

38. It is clear from *Sabel* 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 impression created by the trade marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

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

39. 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.

40. The respective trade marks are show below:

Opponent's trade marks	Applicant's trade mark
<p style="text-align: center;">REIGN (the First, Fourth and Sixth Earlier Marks)</p>	<p style="text-align: center;">Reign Forest (the Second Application)</p>
<p style="text-align: center;">REIGN ENERGY (the Second Earlier Mark)</p>	
<p style="text-align: center;">REIGN FUEL (the Third Earlier Mark)</p>	
<p style="text-align: center;">REIGN PERFORMANCE (the Fifth Earlier Mark)</p>	

41. Mr Hooper suggested that it was important to take into account the fact that the average consumer might not pronounce the entirety of the marks when placing an order. However, I see no reason why the marks as a whole would not be articulated. Similarly, he submitted that search engines might return different results for a consumer who types "reign" into the search engine. I have no evidence on that and the comparison must be made from the perspective of the average consumer, rather than based upon results a search engine might generate.

Overall Impression

42. The Second Application consists of the words REIGN FOREST. In my view, they will be recognised as two dictionary words which have their own independent meanings. Mr Hooper suggested that the word FOREST would have some allusion to goods which are organic, ethically sourced or sustainable. I disagree, this seems to me to be too tenuous a link. In my view, there are two possible ways that the mark will be viewed:

- a. A significant proportion of average consumers will simply recognise the words for their ordinary dictionary meaning. For those consumers, the words both retain an independent distinctive role within the mark. The overall impression of the mark lies in the words equally.
- b. However, there will also be a significant proportion of average consumers who recognise that, in combination, the words are aurally identical to the word RAINFOREST, which may create a secondary meaning for those consumers. The overall impression lies in the combination of these words.

43. The First, Fourth and Sixth Earlier Marks consist of the word REIGN. There are no other elements to contribute to the overall impression of the mark, which lies in the word itself.

44. The Second, Third and Fifth Earlier Marks all consist of the word REIGN followed by a second word (ENERGY, FUEL, PERFORMANCE). The second word in each mark is less distinctive due to it being allusive (such as drinks which have some sort of energy/performance enhancing benefit). Consequently, the word REIGN is the distinctive element in the mark and plays the greater role in the overall impression.

Visual Comparison

45. The First, Fourth and Sixth Earlier Marks overlap with the Second Application in the presence of the word REIGN. However, the additional word FOREST in the

Second Application is a point of visual difference. I find the marks to be visually similar to a medium degree.

46. The same is true of the comparison with the Second, Third and Fifth Earlier Marks. However, the second word in those marks are an additional point of difference. In my view, the marks are visually similar to between a low and medium degree.

Aural Comparison

47. The word REIGN will be pronounced identically in the First, Fourth and Sixth Earlier Marks and the Second Application. The word FOREST is the only point of aural difference. In my view, the marks are aurally similar to a medium degree.

48. The same is true of the comparison with the Second, Third and Fifth Earlier Marks. However, the second word in each of those marks is an additional point of aural difference. Consequently, I find the marks to be aurally similar to between a low and medium degree.

Conceptual Comparison

49. As explained above, for a significant proportion of average consumers, the words REIGN and FOREST will both simply be recognised as having their ordinary dictionary meanings, with which the average consumer will be familiar. The meaning of the word REIGN will be the same for both the First, Fourth and Sixth Earlier Marks and the Second Application. The only point of conceptual difference will, therefore, be the word FOREST in the Second Application. For those average consumers, there is a medium degree of conceptual similarity.

50. However, for the significant proportion of average consumers who recognise that, in combination, the words REIGN and FOREST are aurally identical to the word RAINFOREST, there may be a conceptual meaning which is derived from the Second Application (being a play on the word RAINFOREST), which is absent in the earlier marks. This will act as an additional point of conceptual difference between them. For

that reason, I find the marks to be conceptually similar to between a low and medium degree.

51. The same is true of the comparison with the Second, Third and Fifth Earlier Marks. However, there is a further point of conceptual difference created by the words ENERGY, FUEL and PERFORMANCE. In my view, the marks are conceptually similar to a low degree.

The distinctive character of the earlier marks

52. 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-2779, 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).”

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

54. The opponent has not filed any evidence of use. Consequently, I have only the inherent position to consider. The First, Fourth and Sixth Earlier Marks consist of the words REIGN, which is an ordinary dictionary word with no connection to the relevant goods/services. In my view, it is inherently distinctive to a medium degree. However, I bear in mind that, given that the word REIGN is not a particularly common word, it is at the upper end of medium. The Second, Third and Fifth Earlier Marks have additional words (ENERGY, FUEL and PERFORMANCE). However, these are all likely to be seen as allusive. Consequently, I do not consider that they materially increase the distinctiveness of the Second, Third and Fifth Earlier Marks as a whole and the same finding applies.

Likelihood of confusion

55. 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 them and the goods/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 goods/services may be offset by a greater degree of similarity between the marks, and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the earlier marks, the average consumer for the goods/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 he has retained in his mind.

56. I have found as follows:

- a. The goods and services vary from being identical to similar to a low degree.
- b. The average consumer for the goods and services is a member of the general public or a professional user who will pay at least a medium degree of attention during the purchasing process.
- c. The purchasing process is predominantly visual, although I do not discount an aural component.
- d. The Second Application to be visually and aurally similar to the First, Fourth and Sixth Earlier Marks to a medium degree.
- e. The Second Application to be visually and aurally similar to the Second, Third and Fifth Earlier Marks to between a low and medium degree.
- f. The conceptual similarity of the marks will vary according to the way in which the average consumer perceives the mark.
- g. The earlier marks are all inherently distinctive to a medium degree. However, given that the word REIGN is a relatively uncommon dictionary word, the distinctiveness of the marks is at the upper end of medium.

57. Given the differences between the marks, I do not consider it likely that they will be mistakenly recalled or misremembered as each other, even when used on identical goods. This is because the second word in the Second Application (FOREST) cannot be said to be descriptive/non-distinctive and, for some consumers, will create a secondary meaning (i.e. being a play on the word RAINFOREST). I do not consider that it will be forgotten or overlooked. There is no likelihood of direct confusion.

58. I will now consider whether there is a likelihood of indirect confusion. In *L.A. Sugar Limited v By Back Beat Inc*, Case 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)”.

59. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ approved Mr Purvis's formulation but added:

“13. 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’. Mr Mellor went on to say that, if there is no likelihood of direct confusion, ‘one needs a reasonably special set of circumstances for a finding of a likelihood of indirect confusion’. I would prefer to say that there must be a proper basis for concluding that there is a likelihood of indirect confusion given that there is no likelihood of direct confusion.”

60. In *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch), Arnold J. (as he then was) considered the impact of the CJEU's judgment in *Bimbo*, Case C-591/12P, on the court's earlier judgment in *Medion v Thomson*. The judge said:

“18 The judgment in *Bimbo* confirms that the principle established in *Medion v Thomson* is not confined to the situation where the composite trade mark for which registration is sought contains an element which is identical to an earlier trade mark, but extends to the situation where the composite mark contains an element which is similar to the earlier mark. More importantly for present purposes, it also confirms three other points.

19 The first is that the assessment of likelihood of confusion must be made by considering and comparing the respective marks — visually, aurally and conceptually — as a whole. In *Medion v Thomson* and subsequent case law, the Court of Justice has recognised that there are situations in which the average consumer, while perceiving a composite mark as a whole, will also perceive that it consists of two (or more) signs one (or more) of which has a distinctive significance which is independent of the significance of the whole, and thus may be confused as a result of the identity or similarity of that sign to the earlier mark.

20 The second point is that this principle can only apply in circumstances where the average consumer would perceive the relevant part of the composite mark to have distinctive significance independently of the whole. It does not apply where the average consumer would perceive the composite mark as a unit having a different meaning to the meanings of the separate components. That includes the situation where the meaning of one of the components is qualified by another component, as with a surname and a first name (e.g. BECKER and BARBARA BECKER).

21 The third point is that, even where an element of the composite mark which is identical or similar to the earlier trade mark has an independent distinctive role, it does not automatically follow that there is a likelihood of confusion. It remains necessary for the competent authority to carry out a global assessment taking into account all relevant factors.”

61. I recognise that the word REIGN is not highly distinctive, in the same way as the mark given as an example in category a) of *LA Sugar*. However, in my view, for both groups of average consumers, the word REIGN is sufficiently distinctive that upon encountering it in both the applicant's mark and the earlier marks, the average consumer would conclude that it was more than coincidence and would conclude that the marks originate from the same or economically linked undertakings. For the significant proportion of average consumers who recognise the aural identity to the word RAINFOREST, this may be viewed as indicating a product which is tropical in flavour. Consequently, I find there to be a likelihood of indirect confusion for all goods and services that I have found to be similar to a medium degree or higher. Where there is only a low degree of similarity, the distance between the goods and services will be sufficient to offset the similarity of the marks and, consequently, there is no likelihood of confusion. Whilst I recognise that there are additional differences in respect of the Second, Third and Fifth Earlier Marks, the same findings would apply given that the additional word in each is allusive and the word REIGN, which is the common element, would be perceived as indicating a common source.

Final Remarks

62. For the avoidance of doubt, if I had found there to be a low degree of similarity between the goods in respect of the First Application (which, in my view, is the opponent's best possible case), I would still have found no likelihood of confusion. This is because my other findings regarding the average consumer and purchasing process and distinctiveness apply equally to the First Application. Even though the similarity of the marks would be high, the distance between the goods would, taking into account all of the relevant factors, be sufficient to offset the similarity of the marks. As a result, I would have found no likelihood of direct or indirect confusion.

CONCLUSION

63. The opposition against the First Application is unsuccessful and, subject to any appeal, the application may proceed to registration.

64. The opposition against the Second Application is partially successful and, subject to any appeal, the application is refused in respect of the following goods:

Class 25 Clothes; Clothing; Swaddling clothes; Baby clothes; Beach clothes; Nappy pants [clothing]; Denims [clothing]; Jackets [clothing]; Shorts [clothing]; Work clothes; Drawers [clothing]; Drawers as clothing; Clothes for sports; Aprons [clothing]; Jackets (Stuff -) [clothing]; Stuff jackets [clothing]; Clothes for sport; Linen clothing; Headbands for clothing; Headbands [clothing]; Kerchiefs [clothing]; Gloves as clothing; Gloves [clothing]; Bottoms [clothing]; Capes (clothing); Furs [clothing]; Trunks being clothing; Maternity clothing; Jerseys [clothing]; Babies' pants [clothing]; Clothing layettes; Layettes [clothing]; Clothing for leisure wear; Woolen clothing; Gabardines [clothing]; Oilskins [clothing]; Bodies [clothing]; Clothing for babies; Hoods [clothing]; Ready-to-wear clothing; Garments for protecting clothing; Tops [clothing]; Belts for clothing; Belts [clothing]; Collars [clothing]; Playsuits [clothing]; Veils [clothing]; Knitwear [clothing]; Corsets [clothing, foundation garments]; Paper hats for use as clothing items; Silk clothing;

Fabric belts [clothing]; Mitts [clothing]; Hats (Paper -) [clothing]; Paper hats [clothing]; Beach clothing; Money belts [clothing]; Belts (Money -) [clothing]; Braces for clothing; Chaps (clothing); Ready-made clothing; Embroidered clothing; Casual clothing; Knitted clothing.

Class 30 Herbal preparations for making beverages; Cocoa preparations for use in making beverages; Preparations for making beverages [chocolate based]; Beverages (Coffee-based -); Coffee-based beverages; Chocolate-based beverages; Beverages (Chocolate-based -); Preparations for making beverages [coffee based]; Preparations for making beverages [tea based]; Herbal flavourings for making beverages; Cocoa for use in making beverages; Beverages made of tea; Beverages made with chocolate; Beverages made from chocolate; Preparations for making beverages [cocoa based]; Beverages made of coffee; Beverages made from coffee; Prepared coffee beverages; Prepared coffee and coffee-based beverages; Chocolate flavoured beverage making preparations; Chocolate extracts for the preparation of beverages; Chocolate-based beverages with milk; Beverages made from cocoa; Powdered preparations containing cocoa for use in making beverages; Chocolate essences for the preparation of beverages; Tea beverages (Non-medicated -); Tea-based beverages; Beverages (Tea-based -); Tea beverages; Beverages (Cocoa-based -); Cocoa-based beverages; Fruit flavourings for food or beverages, except essences; Flavorings for beverages; Flavourings of tea for food or beverages; Chocolate beverages.

Class 32 Preparations for making non-alcoholic beverages; Preparation for making non-alcoholic beverages; Syrups and other non-alcoholic preparations for making beverages; Non-alcoholic syrups for making beverages; Syrups for making non-alcoholic beverages; Extracts for making non-alcoholic beverages; Essences for making non-alcoholic beverages; Non-alcoholic essences for making beverages; Non-alcoholic beverages; Beverages (Non-alcoholic -); Cordials (non-alcoholic beverages); Syrups for making beverages; Non-alcoholic beer

flavored beverages; Non-alcoholic malt beverages; Non-alcoholic fruit extracts used in the preparation of beverages; Fruit beverages (non-alcoholic); Squashes [non-alcoholic beverages]; Extracts for making beverages; Beer-based beverages; Non-alcoholic beverages flavored with coffee; Non-alcoholic carbonated beverages; Non-alcoholic drinks; Non-alcoholic beverages flavored with tea; Dilutable preparations for making beverages; Non-alcoholic beverages flavoured with coffee; Syrups for making whey-based beverages; Non-alcoholic honey-based beverages; Honey-based beverages (Non-alcoholic -); Non-alcoholic malt free beverages [other than for medical use]; Fruit-based beverages; Root beers, non-alcoholic beverages; Non-alcoholic beverages with tea flavor; Non-alcoholic beverages flavoured with tea; Kvass [non-alcoholic beverages]; Syrup for making beverages; Non-alcoholic malt drinks; Non-alcoholic essences for making non-alcoholic beverages, not in the nature of essential oils; Non-alcoholic dried fruit beverages; Non-alcoholic soda beverages flavoured with tea; Non-alcoholic beverages containing fruit juices; Alcohol free beverages; Non-alcoholic fruit drinks; Non-alcoholic beverages containing vegetable juices; Non-alcoholic flavored carbonated beverages; Smoothies [non-alcoholic fruit beverages]; Syrups for beverages; Essences for making beverages; Syrups for making fruit-flavored drinks; Non-alcoholic fruit juice beverages; Fruit juice beverages (Non-alcoholic -); Carbonated non-alcoholic drinks; Powders used in the preparation of fruit-based beverages; Sorbets [beverages]; Sherbets [beverages]; Frozen fruit-based beverages; Mixes for making sorbet beverages; Sarsaparilla [non-alcoholic beverage]; Syrups used in the preparation of soft drinks; Fruit-flavored beverages.

Class 33 Alcoholic preparations for making beverages; Preparations for making alcoholic beverages; Alcoholic beverages except beers; Alcoholic beverages (except beers); Alcoholic beverages [except beers]; Beverages (Alcoholic -), except beer; Alcoholic beverages, except beer; Alcoholic beverages (except beer); Alcoholic carbonated beverages, except beer; Cordials [alcoholic beverages]; Pre-mixed alcoholic

beverages; Alcoholic fruit beverages; Alcoholic beverages of fruit; Pre-mixed alcoholic beverages, other than beer-based; Sugarcane-based alcoholic beverages; Fruit (Alcoholic beverages containing -); Alcoholic beverages containing fruit; Grain-based distilled alcoholic beverages; Alcoholic coffee-based beverage; Prepared alcoholic cocktails; Alcoholic tea-based beverage; Alcoholic fruit cocktail drinks; Wine-based beverages; Alcoholic cocktails; Rum [alcoholic beverage]; Alcoholic cocktails containing milk; Alcoholic energy drinks; Low alcoholic drinks; Spirits [beverages]; Alcoholic cocktails in the form of chilled gelatins; Alcoholic aperitifs; Alcoholic cordials; Rum-based beverages; Distilled beverages; Beverages (Distilled -).

65. The Second Application may proceed to registration in respect of those goods for which the opposition was unsuccessful and in respect of the unopposed goods and services, which are as follows:

Class 16 Wrapping materials made of paper; Wrapping materials made of cardboard; Packaging materials made of recycled paper; Packaging materials made of cardboard; Packaging materials made from mineral-based paper substitutes; Rubbish bags (made of paper or plastic materials); Wrapping materials made of card; Boxes made of paper; Bags made of paper for packaging; Sheets for wrapping made of plastic material; Napkins made of paper for household use; Bags made of paper; Posters made of paper; Carrying cases made of paper; Figures made of paper; Starches (Packaging material made of -); Packaging material made of starches; Figurines made from paper; Bags for packaging made of biodegradable paper; Boxes made of cardboard; Containers for ice made of paper or cardboard; Printed packaging materials of paper; Padding materials of paper or cardboard; Paper crafts materials; Place mats made of paper; Cases made of corrugated cardboard; Works of art made of paper; Storage containers made of paper; Sheets for wrapping made of paper; Coasters made of paper; Gift boxes made of cardboard; Writing utensils made of fibres; Flags made from paper; Handkerchiefs made of paper.

Class 25 Gussets for underwear [parts of clothing]; Pockets for clothing; Gussets for bathing suits [parts of clothing].

Class 35 Wholesale services in relation to alcoholic beverages (except beer); Retail services in relation to alcoholic beverages (except beer); Retail services in relation to preparations for making alcoholic beverages; Wholesale services in relation to preparations for making alcoholic beverages; Mail order retail services related to alcoholic beverages (except beer); Retail services relating to alcoholic beverages; Retail services via catalogues related to alcoholic beverages (except beer); Wholesale services in relation to non-alcoholic beverages; Marketing; Advertising and marketing; Advertising and marketing consultancy; Promotional marketing; Influencer marketing; Advertising and marketing services; Marketing consultancy; Product marketing; Affiliate marketing; Marketing consulting; Digital marketing; Marketing, advertising and promotion services; Advertising, marketing and promotion services; Advertising, marketing and promotional services; Marketing, advertising, and promotional services; Advertising, promotional and marketing services; Marketing research; Internet marketing; Online marketing; Marketing services; Business marketing consultancy; Marketing forecasting; Financial marketing; Referral marketing; On-line advertising and marketing services; Marketing analysis; Marketing studies; Targeted marketing; Business marketing services; Advertising copywriting; Distribution of advertising, marketing and promotional material; Marketing information; Investigations of marketing strategy; Direct marketing; Promotion, advertising and marketing of on-line websites; Planning of marketing strategies; Marketing advice; Direct marketing consulting; Consultancy services relating to advertising, publicity and marketing; Marketing research services; Dissemination of advertising, marketing and publicity materials; Marketing assistance; Event marketing; Research services relating to advertising and marketing; Marketing management advice; Database marketing; Design of marketing surveys; Marketing agency services; Promotion [advertising]

of business; Business marketing consulting services; Development of marketing concepts; Marketing plan development; Advertising, marketing and promotional consultancy, advisory and assistance services; Consultancy services in the field of affiliate marketing; Direct marketing services; Copywriting for advertising and promotional purposes; Marketing analysis services; Trade marketing [other than selling]; Consultancy relating to marketing; Modeling for advertising or sales promotion; Advice in the field of business management and marketing; Creative marketing plan development services; Promotional marketing services using audiovisual media; Modelling for advertising or sales promotion; Business marketing consultation services; Modeling services for advertising or sales promotion; Recruitment services for sales and marketing personnel; Marketing advisory services; Development of marketing strategies and concepts; Consultancy regarding advertising communications strategy; Advertising services for the promotion of e-commerce; Planning services for marketing studies; Consulting services in the field of Internet marketing; Business advice relating to strategic marketing; Marketing consultation services; Marketing research and analysis; Marketing research or analysis; Business advice relating to marketing; Marketing (Business advice relating to -); Preparation of marketing surveys; Providing marketing consulting in the field of social media; Professional consultancy relating to marketing; Consumer profiling for commercial or marketing purposes; Advertising; Analysis of marketing trends; Market research and marketing studies; Business consultancy services relating to the marketing of fund raising campaigns; Providing business marketing information; Advertising planning; Advertising and marketing services provided via communications channels; Advertising and marketing services provided by means of social media; Brand creation services (advertising and promotion); Consulting services relating to marketing; Publicity and sales promotion services; Developing promotional campaigns for business; Consultancy relating to demographics for marketing purposes; Marketing in the framework of software publishing; Advertising and promotion services; Copywriting; Providing advice in the

field of business management and marketing; Marketing services in the field of travel; Advertising research; Publicity and sales promotion; Promotional and advertising services; Promotional advertising services; Advertising and promotional services; Publicity and advertising; Advertising and publicity; Advertising and publicity services; Consultancy regarding advertising communication strategies; Advice relating to marketing management; Administration relating to marketing; Conducting marketing studies; Conducting of marketing studies; Search engine marketing services; Information or enquiries on business and marketing; Advertising and marketing services provided by means of blogging; Rental of all publicity and marketing presentation materials; Consultancy relating to business advertising; Sales promotion using audiovisual media; Preparation of marketing plans; Estimations for marketing purposes; Modelling and models for advertising or sales promotion; Consulting in sales techniques and sales programmes; Recruitment advertising; Analysis relating to marketing; Business advice relating to marketing management consultations; Telephone marketing services [not selling]; Marketing services in the field of restaurants; Marketing services in the field of dentistry; Promotion [advertising] of travel; Real estate marketing; Development of promotional campaigns; Marketing services in the field of web site traffic optimization; Market research for advertising; Real estate marketing analysis; Planning services for advertising; Development of advertising concepts; Digital advertising services; Sales promotion; Preparation of reports for marketing; Preparation of advertising campaigns; Advisory services relating to marketing; Design of advertising brochures; Advertising research services; Retail services relating to jewelry.

Class 40 Spirits distillery services; Brewing of beer; Distilling of spirits for others; Beer brewing for others; Sawmills, planing [sawmill].

Class 41 Education; Vocational education; Health education; Pre-school education; Education and training; Academies [education]; Education and instruction; Services of schools [education]; Education services;

University education services; Academy education services; Academy services (Education -); Education academy services; Education, teaching and training; Vocational education and training services; Religious education; Education (Religious -); Music education; Education and instruction services; Training and education services; Education and training services; Education examination; Kindergarten services [education or entertainment]; Educational services for providing courses of education; Provision of education courses; Career counseling [education]; Teaching of diet education; Provision of training and education; Provision of education and training; Higher education services; Physical education; Providing of education; Education academy services for teaching languages; Entertainment, education and instruction services; Medical education services; Education academy services for teaching art history; Computer education training; Education services relating to vocational training; Information (Education -); Education information; Primary education services; Adult education services; Residential education courses; Computer education training services; Linguistic education and training services; Boarding school education; Education and training consultancy; Primary education services relating to literacy; Physical education instruction; Sports education services; Education academy services for teaching acting; Physical education services; Musical education services; Vocational education relating to self-defence; Vocational education relating to home safety; Further education; Physical health education; Legal education services; Technological education services; Providing continuing medical education courses; Lingual education; Online education services; Provision of physical education; Management of education services; Management education services; Education services related to the arts; Education services relating to nutrition; Singing education; Education services relating to health; Education academy services for teaching construction drafting; Dietary education services; Providing continuing dental education courses; Career counselling relating to education and training; Education services relating to religion; Vocational education in the field of mechanics; Education courses

relating to automation; Club education services; Vocational education relating to personal safety; Education and training services in the field of occupational health and safety; Education and training in the field of music and entertainment; Adult education services relating to finance; Providing continuing nursing education courses; Adult education services relating to medicine; Research in the field of education; Education information services; Education and training in the field of occupational health and safety; Guidance (Vocational -) [education or training advice]; Vocational guidance [education or training advice]; Education services for imparting language teaching methods; Sporting education services; Secondary school educational services; Education services relating to medicine; Education, entertainment and sport services; Educational services provided by institutes of higher education; Education services relating to business training; Educational and teaching services; Training or education services in the field of life coaching; Education services relating to the veterinary profession; Education courses relating to the travel industry; Career counselling [training and education advice]; Providing continuing legal education courses; Adult education services relating to law; Education in the field of computing; Adult education services relating to commerce; Education services relating to yoga; Blindness prevention education services; Vocational education relating to first aid; Education, entertainment and sports; Education services relating to conservation; Vocational education for young people; Provision of education courses relating to electronics; Education services relating to music; Education in the field of occupational health and safety; English language education services; Education in the field of computing science; Adult education services relating to banking; Career advisory services (education or training advice); Education services relating to commerce; Provision of education courses relating to telecommunications; Adult education services relating to pharmacy; Education services relating to industry; Education services relating to hygiene; Provision of facilities for education; Education services relating to the cinema; Residential education courses relating to archery; Education in movement awareness; Provision of

education courses relating to computers; Education services in the nature of courses at the university level; Organization of education competitions; Education services relating to photography; Education services relating to sports; Education services relating to banking; Adult education services relating to management; Education services relating to pharmacy; Education services relating to fashion; Competitions (Organization of -) [education or entertainment]; Organization of competitions for education or entertainment; Organization of competitions [education or entertainment]; Adult education services relating to auditing; Educational and training services relating to healthcare; Foreign language education services; Education and training in the field of automotive engineering; Education services relating to conservation of the environment; Education services relating to food technology; Education and training in the field of business management; Physical fitness education services; Adult education services relating to accounting; Training courses in strategic planning relating to advertising, promotion, marketing and business; Training services relating to retail marketing.

Class 43 Serving of alcoholic beverages; Preparation of food and beverages.

COSTS

66. As both parties have enjoyed a degree of success, each being entirely or mostly successful in one of the oppositions, I direct that each party bears its own costs.

Dated this 12th day of December 2025

S WILSON

For the Registrar

ANNEX 1

The First Application

Class 33

Rum [alcoholic beverage].

The Second Application

Class 16

Wrapping materials made of paper; Wrapping materials made of cardboard; Packaging materials made of recycled paper; Packaging materials made of cardboard; Packaging materials made from mineral-based paper substitutes; Rubbish bags (made of paper or plastic materials); Wrapping materials made of card; Boxes made of paper; Bags made of paper for packaging; Sheets for wrapping made of plastic material; Napkins made of paper for household use; Bags made of paper; Posters made of paper; Carrying cases made of paper; Figures made of paper; Starches (Packaging material made of -); Packaging material made of starches; Figurines made from paper; Bags for packaging made of biodegradable paper; Boxes made of cardboard; Containers for ice made of paper or cardboard; Printed packaging materials of paper; Padding materials of paper or cardboard; Paper crafts materials; Place mats made of paper; Cases made of corrugated cardboard; Works of art made of paper; Storage containers made of paper; Sheets for wrapping made of paper; Coasters made of paper; Gift boxes made of cardboard; Writing utensils made of fibres; Flags made from paper; Handkerchiefs made of paper.

Class 25

Clothes; Clothing; Swaddling clothes; Baby clothes; Beach clothes; Nappy pants [clothing]; Denims [clothing]; Jackets [clothing]; Shorts [clothing]; Work clothes; Drawers [clothing]; Drawers as clothing; Clothes for sports; Aprons [clothing]; Jackets (Stuff -) [clothing]; Stuff jackets [clothing]; Clothes for sport; Linen clothing; Headbands for clothing; Headbands [clothing]; Kerchiefs [clothing]; Gloves as clothing; Gloves [clothing]; Bottoms [clothing]; Capes (clothing); Furs [clothing]; Trunks being clothing; Maternity clothing; Jerseys [clothing]; Babies' pants [clothing]; Clothing layettes; Layettes [clothing]; Clothing for leisure wear; Woolen clothing; Gabardines [clothing]; Oilskins [clothing]; Bodies [clothing]; Clothing for babies; Hoods [clothing]; Ready-to-

wear clothing; Garments for protecting clothing; Tops [clothing]; Gussets for underwear [parts of clothing]; Belts for clothing; Belts [clothing]; Collars [clothing]; Playsuits [clothing]; Pockets for clothing; Veils [clothing]; Knitwear [clothing]; Corsets [clothing, foundation garments]; Paper hats for use as clothing items; Silk clothing; Fabric belts [clothing]; Mitts [clothing]; Hats (Paper -) [clothing]; Paper hats [clothing]; Beach clothing; Money belts [clothing]; Belts (Money -) [clothing]; Braces for clothing; Chaps (clothing); Ready-made clothing; Embroidered clothing; Casual clothing; Knitted clothing; Gussets for bathing suits [parts of clothing].

Class 30

Herbal preparations for making beverages; Cocoa preparations for use in making beverages; Preparations for making beverages [chocolate based]; Beverages (Coffee-based -); Coffee-based beverages; Chocolate-based beverages; Beverages (Chocolate-based -); Preparations for making beverages [coffee based]; Preparations for making beverages [tea based]; Herbal flavourings for making beverages; Cocoa for use in making beverages; Beverages made of tea; Beverages made with chocolate; Beverages made from chocolate; Preparations for making beverages [cocoa based]; Beverages made of coffee; Beverages made from coffee; Prepared coffee beverages; Prepared coffee and coffee-based beverages; Chocolate flavoured beverage making preparations; Chocolate extracts for the preparation of beverages; Chocolate-based beverages with milk; Beverages made from cocoa; Powdered preparations containing cocoa for use in making beverages; Chocolate essences for the preparation of beverages; Tea beverages (Non-medicated -); Tea-based beverages; Beverages (Tea-based -); Tea beverages; Beverages (Cocoa-based -); Cocoa-based beverages; Fruit flavourings for food or beverages, except essences; Flavorings for beverages; Flavourings of tea for food or beverages; Chocolate beverages.

Class 32

Preparations for making non-alcoholic beverages; Preparation for making non-alcoholic beverages; Syrups and other non-alcoholic preparations for making beverages; Non-alcoholic syrups for making beverages; Syrups for making non-alcoholic beverages; Extracts for making non-alcoholic beverages; Essences for making non-alcoholic beverages; Non-alcoholic essences for making beverages; Non-

alcoholic beverages; Beverages (Non-alcoholic -); Cordials (non-alcoholic beverages); Syrups for making beverages; Non-alcoholic beer flavored beverages; Non-alcoholic malt beverages; Non-alcoholic fruit extracts used in the preparation of beverages; Fruit beverages (non-alcoholic); Squashes [non-alcoholic beverages]; Extracts for making beverages; Beer-based beverages; Non-alcoholic beverages flavored with coffee; Non-alcoholic carbonated beverages; Non-alcoholic drinks; Non-alcoholic beverages flavored with tea; Dilutable preparations for making beverages; Non-alcoholic beverages flavoured with coffee; Syrups for making whey-based beverages; Non-alcoholic honey-based beverages; Honey-based beverages (Non-alcoholic -); Non-alcoholic malt free beverages [other than for medical use]; Fruit-based beverages; Root beers, non-alcoholic beverages; Non-alcoholic beverages with tea flavor; Non-alcoholic beverages flavoured with tea; Kvass [non-alcoholic beverages]; Syrup for making beverages; Non-alcoholic malt drinks; Non-alcoholic essences for making non-alcoholic beverages, not in the nature of essential oils; Non-alcoholic dried fruit beverages; Non-alcoholic soda beverages flavoured with tea; Non-alcoholic beverages containing fruit juices; Alcohol free beverages; Non-alcoholic fruit drinks; Non-alcoholic beverages containing vegetable juices; Non-alcoholic flavored carbonated beverages; Smoothies [non-alcoholic fruit beverages]; Syrups for beverages; Essences for making beverages; Syrups for making fruit-flavored drinks; Non-alcoholic fruit juice beverages; Fruit juice beverages (Non-alcoholic -); Carbonated non-alcoholic drinks; Powders used in the preparation of fruit-based beverages; Sorbets [beverages]; Sherbets [beverages]; Frozen fruit-based beverages; Mixes for making sorbet beverages; Sarsaparilla [non-alcoholic beverage]; Syrups used in the preparation of soft drinks; Fruit-flavored beverages.

Class 33

Alcoholic preparations for making beverages; Preparations for making alcoholic beverages; Alcoholic beverages except beers; Alcoholic beverages (except beers); Alcoholic beverages [except beers]; Beverages (Alcoholic -), except beer; Alcoholic beverages, except beer; Alcoholic beverages (except beer); Alcoholic carbonated beverages, except beer; Cordials [alcoholic beverages]; Pre-mixed alcoholic beverages; Alcoholic fruit beverages; Alcoholic beverages of fruit; Pre-mixed alcoholic beverages, other than beer-based; Sugarcane-based alcoholic beverages; Fruit (Alcoholic beverages containing -); Alcoholic beverages containing fruit; Grain-based

distilled alcoholic beverages; Alcoholic coffee-based beverage; Prepared alcoholic cocktails; Alcoholic tea-based beverage; Alcoholic fruit cocktail drinks; Wine-based beverages; Alcoholic cocktails; Rum [alcoholic beverage]; Alcoholic cocktails containing milk; Alcoholic energy drinks; Low alcoholic drinks; Spirits [beverages]; Alcoholic cocktails in the form of chilled gelatins; Alcoholic aperitifs; Alcoholic cordials; Rum-based beverages; Distilled beverages; Beverages (Distilled -).

Class 35

Wholesale services in relation to alcoholic beverages (except beer); Retail services in relation to alcoholic beverages (except beer); Retail services in relation to preparations for making alcoholic beverages; Wholesale services in relation to preparations for making alcoholic beverages; Mail order retail services related to alcoholic beverages (except beer); Retail services relating to alcoholic beverages; Retail services via catalogues related to alcoholic beverages (except beer); Wholesale services in relation to non-alcoholic beverages; Marketing; Advertising and marketing; Advertising and marketing consultancy; Promotional marketing; Influencer marketing; Advertising and marketing services; Marketing consultancy; Product marketing; Affiliate marketing; Marketing consulting; Digital marketing; Marketing, advertising and promotion services; Advertising, marketing and promotion services; Advertising, marketing and promotional services; Marketing, advertising, and promotional services; Advertising, promotional and marketing services; Marketing research; Internet marketing; Online marketing; Marketing services; Business marketing consultancy; Marketing forecasting; Financial marketing; Referral marketing; On-line advertising and marketing services; Marketing analysis; Marketing studies; Targeted marketing; Business marketing services; Advertising copywriting; Distribution of advertising, marketing and promotional material; Marketing information; Investigations of marketing strategy; Direct marketing; Promotion, advertising and marketing of on-line websites; Planning of marketing strategies; Marketing advice; Direct marketing consulting; Consultancy services relating to advertising, publicity and marketing; Marketing research services; Dissemination of advertising, marketing and publicity materials; Marketing assistance; Event marketing; Research services relating to advertising and marketing; Marketing management advice; Database marketing; Design of marketing surveys; Marketing agency services; Promotion [advertising] of business; Business marketing consulting services; Development of marketing

concepts; Marketing plan development; Advertising, marketing and promotional consultancy, advisory and assistance services; Consultancy services in the field of affiliate marketing; Direct marketing services; Copywriting for advertising and promotional purposes; Marketing analysis services; Trade marketing [other than selling]; Consultancy relating to marketing; Modeling for advertising or sales promotion; Advice in the field of business management and marketing; Creative marketing plan development services; Promotional marketing services using audiovisual media; Modelling for advertising or sales promotion; Business marketing consultation services; Modeling services for advertising or sales promotion; Recruitment services for sales and marketing personnel; Marketing advisory services; Development of marketing strategies and concepts; Consultancy regarding advertising communications strategy; Advertising services for the promotion of e-commerce; Planning services for marketing studies; Consulting services in the field of Internet marketing; Business advice relating to strategic marketing; Marketing consultation services; Marketing research and analysis; Marketing research or analysis; Business advice relating to marketing; Marketing (Business advice relating to -); Preparation of marketing surveys; Providing marketing consulting in the field of social media; Professional consultancy relating to marketing; Consumer profiling for commercial or marketing purposes; Advertising; Analysis of marketing trends; Market research and marketing studies; Business consultancy services relating to the marketing of fund raising campaigns; Providing business marketing information; Advertising planning; Advertising and marketing services provided via communications channels; Advertising and marketing services provided by means of social media; Brand creation services (advertising and promotion); Consulting services relating to marketing; Publicity and sales promotion services; Developing promotional campaigns for business; Consultancy relating to demographics for marketing purposes; Marketing in the framework of software publishing; Advertising and promotion services; Copywriting; Providing advice in the field of business management and marketing; Marketing services in the field of travel; Advertising research; Publicity and sales promotion; Promotional and advertising services; Promotional advertising services; Advertising and promotional services; Publicity and advertising; Advertising and publicity; Advertising and publicity services; Consultancy regarding advertising communication strategies; Advice relating to marketing management; Administration relating to marketing; Conducting marketing studies;

Conducting of marketing studies; Search engine marketing services; Information or enquiries on business and marketing; Advertising and marketing services provided by means of blogging; Rental of all publicity and marketing presentation materials; Consultancy relating to business advertising; Sales promotion using audiovisual media; Preparation of marketing plans; Estimations for marketing purposes; Modelling and models for advertising or sales promotion; Consulting in sales techniques and sales programmes; Recruitment advertising; Analysis relating to marketing; Business advice relating to marketing management consultations; Telephone marketing services [not selling]; Marketing services in the field of restaurants; Marketing services in the field of dentistry; Promotion [advertising] of travel; Real estate marketing; Development of promotional campaigns; Marketing services in the field of web site traffic optimization; Market research for advertising; Real estate marketing analysis; Planning services for advertising; Development of advertising concepts; Digital advertising services; Sales promotion; Preparation of reports for marketing; Preparation of advertising campaigns; Advisory services relating to marketing; Design of advertising brochures; Advertising research services; Retail services relating to jewelry.

Class 40

Spirits distillery services; Brewing of beer; Distilling of spirits for others; Beer brewing for others; Sawmills, planing [sawmill].

Class 41

Education; Vocational education; Health education; Pre-school education; Education and training; Academies [education]; Education and instruction; Services of schools [education]; Education services; University education services; Academy education services; Academy services (Education -); Education academy services; Education, teaching and training; Vocational education and training services; Religious education; Education (Religious -); Music education; Education and instruction services; Training and education services; Education and training services; Education examination; Kindergarten services [education or entertainment]; Educational services for providing courses of education; Provision of education courses; Career counseling [education]; Teaching of diet education; Provision of training and education; Provision of education and training; Higher education services; Physical education; Providing of education;

Education academy services for teaching languages; Entertainment, education and instruction services; Medical education services; Education academy services for teaching art history; Computer education training; Education services relating to vocational training; Information (Education -); Education information; Primary education services; Adult education services; Residential education courses; Computer education training services; Linguistic education and training services; Boarding school education; Education and training consultancy; Primary education services relating to literacy; Physical education instruction; Sports education services; Education academy services for teaching acting; Physical education services; Musical education services; Vocational education relating to self-defence; Vocational education relating to home safety; Further education; Physical health education; Legal education services; Technological education services; Providing continuing medical education courses; Lingual education; Online education services; Provision of physical education; Management of education services; Management education services; Education services related to the arts; Education services relating to nutrition; Singing education; Education services relating to health; Education academy services for teaching construction drafting; Dietary education services; Providing continuing dental education courses; Career counselling relating to education and training; Education services relating to religion; Vocational education in the field of mechanics; Education courses relating to automation; Club education services; Vocational education relating to personal safety; Education and training services in the field of occupational health and safety; Education and training in the field of music and entertainment; Adult education services relating to finance; Providing continuing nursing education courses; Adult education services relating to medicine; Research in the field of education; Education information services; Education and training in the field of occupational health and safety; Guidance (Vocational -) [education or training advice]; Vocational guidance [education or training advice]; Education services for imparting language teaching methods; Sporting education services; Secondary school educational services; Education services relating to medicine; Education, entertainment and sport services ;Educational services provided by institutes of higher education; Education services relating to business training; Educational and teaching services; Training or education services in the field of life coaching; Education services relating to the veterinary profession; Education courses relating to the travel industry; Career counselling [training and education advice]; Providing continuing legal

education courses; Adult education services relating to law; Education in the field of computing; Adult education services relating to commerce; Education services relating to yoga; Blindness prevention education services; Vocational education relating to first aid; Education, entertainment and sports; Education services relating to conservation; Vocational education for young people; Provision of education courses relating to electronics; Education services relating to music; Education in the field of occupational health and safety; English language education services; Education in the field of computing science; Adult education services relating to banking; Career advisory services (education or training advice); Education services relating to commerce; Provision of education courses relating to telecommunications; Adult education services relating to pharmacy; Education services relating to industry; Education services relating to hygiene; Provision of facilities for education; Education services relating to the cinema; Residential education courses relating to archery; Education in movement awareness; Provision of education courses relating to computers; Education services in the nature of courses at the university level; Organization of education competitions; Education services relating to photography; Education services relating to sports; Education services relating to banking; Adult education services relating to management; Education services relating to pharmacy; Education services relating to fashion; Competitions (Organization of -) [education or entertainment]; Organization of competitions for education or entertainment; Organization of competitions [education or entertainment]; Adult education services relating to auditing; Educational and training services relating to healthcare; Foreign language education services; Education and training in the field of automotive engineering; Education services relating to conservation of the environment; Education services relating to food technology; Education and training in the field of business management; Physical fitness education services; Adult education services relating to accounting; Training courses in strategic planning relating to advertising, promotion, marketing and business; Training services relating to retail marketing.

Class 43

Serving of alcoholic beverages; Preparation of food and beverages.

ANNEX 2

The First Earlier Mark

Class 32

Fitness beverages.

The Second, Third and Fifth Earlier Marks

Class 32

Energy drinks; soft drinks.

The Fourth Earlier Mark

Class 25

Clothing; clothing, namely, tops, shirts, t-shirts, sweatshirts, hoodies, jackets, bottoms, pants, shorts, sports bras, bandanas, sweat bands, and gloves; headwear; hats; beanies; work-out gloves; fingerless gloves; socks; footwear.

The Sixth Earlier Mark

Class 35

Retail and wholesale services in the field of beverages, clothing, headwear, calendars, posters, stickers; retail and wholesale services in the field of promotional items, namely bags, luggage, beverage ware, coolers, refrigeration equipment, beverage storage equipment, personal care products, clothing, headwear, footwear, gloves, tool kits, helmets, umbrellas, blankets, tents, towels, sporting equipment, musical instruments and accessories therefore, sound and audio equipment and accessories therefore, timepieces, jewellery, toys, toy cars, location tracking devices, charging devices, video game equipment and accessories therefore, games, furniture, notebooks, coasters, posters; On-line retail store services in the field of beverages, clothing, headwear, calendars, posters, stickers; On-line retail store services in the field of promotional items, namely bags, luggage, beverage ware, coolers, refrigeration equipment, beverage storage equipment, personal care products, clothing, headwear, footwear, gloves, tool kits, helmets, umbrellas, blankets, tents, towels, sporting equipment, musical instruments and accessories therefore, sound and audio equipment and accessories therefore, timepieces, jewellery, toys, toy cars, location

tracking devices, charging devices, video game equipment and accessories therefore, games, furniture, notebooks, coasters, posters.