

**O/0004/24**

**TRADE MARKS ACT 1994**

**TRADE MARK REGISTRATION No. 918260868**

**IN THE NAME OF SUBWAY IP LLC**

**AND**

**APPLICATION 504355 IN THE NAME OF NVK LTD**

**TO INVALIDATE THE TRADE MARK**

**AND**

**TRADE MARK REGISTRATION No. 3347473 IN THE NAME OF NVK LTD**

**AND**

**APPLICATION 504543 IN THE NAME OF SUBWAY IP LLC**

**TO INVALIDATE THE TRADE MARK**

**AND**

**TRADE MARK REGISTRATIONS 3124255, 3125681, 3124473 & 3083646**

**IN THE NAME OF NVK LTD**

**AND**

**APPLICATIONS 504838/839 & 504841/842 IN THE NAME OF SUBWAY IP LLC**

**TO REVOKE THE TRADE MARKS FOR NON-USE**

## BACKGROUND AND PLEADINGS

1. These are six consolidated cancellation proceedings between Subway IP LLC (“Subway”) and NVK Limited (“NVK”).

2. Vikas Kunnure applied on 17<sup>th</sup> November 2021 under section 47(2) of the Trade Marks Act 1994 (“the Act”) to invalidate the registration of comparable trade mark 918260868.<sup>1</sup> This mark consists of the words **SUBWAY CLICK & EAT**. The ‘868 mark is registered in relation to:

Class 35: Retail and wholesale services relating to food and drink, including prepared meals; processing purchase orders; customer loyalty and loyalty card services; on-line ordering services in the field of restaurant take-out and delivery; loyalty, incentive and bonus program services; provision of information, advisory and consultancy services in relation to the aforesaid services.

Class 43: Restaurant services, namely providing of food and beverages for consumption on and off the premises; restaurant services featuring sandwiches; catering services; eat-in and take-out food restaurant services; provision of information, advisory and consultancy services in relation to the aforesaid services.

3. Mr Kunnure relied on three earlier UK trade marks registered in his name under 3347473 and (as a series of two) 3347479. The ‘473 mark consists of the words **CLICK EAT**. The marks registered under the ‘479 registration consist of the logo shown below in colour, and in black and white.<sup>2</sup>

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<sup>1</sup> The ‘868 registration was created when the UK completed the process of leaving the EU in 2020. It replaces the UK coverage originally enjoyed by an EU-wide trade mark registration. The comparable mark is treated as though it was filed in the UK on 24th June 2020 and registered on 14th October 2020, being the dates when the parent EU mark was filed/registered.

<sup>2</sup> Nothing turns on the colours in which one of the marks is registered. There is, therefore, no need to distinguish between them. Consequently, I will base my findings on the black and white mark version of the mark.



4. The '473 and '479 marks are registered, inter alia, in relation to:

Class 35: Retail and wholesale services in connection with the sale of computer software for the ordering, delivery and payment of food and drink, food, drink, alcoholic beverages, spirits and wine; advertising, marketing and publicity services; loyalty card and discount card membership schemes.

Class 43: Provision of food and drink; restaurant, café and cafeteria services; food and drink take-away services; reservation and booking services for food and drink outlets and restaurants, hotels and accommodation; food and drink ordering services.

5. According to Mr Kunnure, the services for which the '473 and '479 marks are registered are identical, or similar, to the services for which the '868 mark is registered.<sup>3</sup> Further, Subway's mark is similar to the earlier marks because it includes the words CLICK EAT. Accordingly, he claimed that there was a likelihood of confusion on the part of the public, including the likelihood of association. Consequently, registration of the '868 mark was contrary to section 5(2)(b) of the Act.

6. With effect from 6<sup>th</sup> April 2022, the earlier marks were assigned to NVK. At the same time, NVK took over the application to invalidate the '868 mark from Mr Kunnure.

7. Subway filed a counterstatement denying the grounds for invalidation of the '868 mark. According to Subway, there is no likelihood of confusion, partly because CLICK EAT is descriptive and non-distinctive for the services at issue.

8. On 31<sup>st</sup> January 2022, Subway applied under section 47(1) of the Act to invalidate NVK's earlier '473 word mark in relation to some of the goods/services for which it is registered in classes 9, 35, 38, 39, 42 & 43 (including all the services relied on by NVK

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<sup>3</sup> In accordance with section 47(2G) and (2H) of the Act

in its attack on Subway's mark). According to Subway, the words CLICK EAT consist of:

*“an instruction for the ordering of food on-line - you click [using a computer mouse or keyboard] and then you eat;*



*and/ or*

*b. portrays the quality and/or other characteristics of the Invalid Goods and Services as it indicates the ease/simplicity of the operation of goods and/or Services.”*

9. Therefore, Subway says the mark consists exclusively of a description of characteristics of the goods/services specified in its application, and/or a purely promotional statement going to the ease of use of those goods/services. Consequently, the registration of the '473 mark was contrary to section 3(1)(c) and/or (b) of the Act and it should be declared invalid.

10. NVK filed a counterstatement denying the grounds put forward by Subway for invalidating the registration of the '473 mark.

11. On 29<sup>th</sup> April 2022, Subway made four further applications under section 46(1)(a) and (b) of the Act to revoke four other trade marks in the name of NVK for non-use. These are shown in the following table.

<i>Trade mark</i>	<i>Date of completion of the registration procedure</i>	<i>Goods/services</i>
3124255  	01/01/2016	Restaurant services and related services in class 43.
3125681 Mark as per 3124255 above	01/01/2016	As above
3083646 Mark as per 3124255 above	27/02/2015	As above
3124473  	01/01/2016	As above

12. Subway contends that the '255, '681 and '4473 marks were not put to genuine use in the periods 2<sup>nd</sup> January 2016 – 1<sup>st</sup> January 2021 and 29<sup>th</sup> April 2017 – 28<sup>th</sup> April 2022. Consequently, it requests revocation with effect from the earliest of 2<sup>nd</sup> January 2021 or 29<sup>th</sup> April 2022.

13. Subway contends that the '646 mark was not put to genuine use in the periods 28<sup>th</sup> February 2015 to 27<sup>th</sup> February 2020, 23<sup>rd</sup> June 2015 – 22<sup>nd</sup> June 2020, and 29<sup>th</sup> April 2017 – 28<sup>th</sup> April 2022. Consequently, it requests revocation from the earliest of 28<sup>th</sup> February 2020, 23<sup>rd</sup> June 2020 or 29<sup>th</sup> April 2022.

14. Mr Kunnure filed counterstatements denying that grounds for revocation exist. According to Mr Kunnure/NVK, the marks were used during the relevant periods, or to the extent they were not used, there were proper reasons for non-use. The reason identified in the forms TM8N is that:

*“...the COVID pandemic and the direct impact on the hospitality sector in particular, prevented the Registrant from making use of its trade mark(s) as it had intended to do within the relevant period.”*

15. The invalidation, counter invalidation, and revocation proceedings were consolidated.

## **REPRESENTATION**

16. NVK is represented by Wilson Gunn. Subway is represented by Hansel Henson LLP.

17. Neither party asked for a hearing. I have therefore taken this decision on the basis of the papers on file. This includes written arguments provided by the parties' representatives.

## **THE EVIDENCE**

18. Subway's evidence consists of three witness statements by Justine Flockhart (with twelve exhibits) and one by Katja Vangeneugden (with one exhibit). Ms Flockhart is a solicitor at Hansel Henson. The main purpose of her first statement is to show that CLICK EAT is descriptive and non-distinctive for online food/drink related services.

19. NVK's evidence consists of witness statements by Vikas Kunnure (with four exhibits) and Andrew Marsden (with three exhibits). As explained above, Mr Kunnure was the original applicant to invalidate Subway's 868 mark and, at that time, the owner of the NVK's trade marks. He is a director of the new applicant/owner - NVK. The main purposes of Mr Kunnure's evidence are to set out the background to the online business operated under the CLICK-EAT word and figurative marks, to give evidence that it has provided an online restaurant booking system since August 2019, and an online takeaway food ordering service since November 2019. Mr Kunnure also gives

evidence about obstacles, including the COVID pandemic, which he says prevented NVK from offering its services for large parts of the relevant periods.

20. The main purpose of Ms Flockhart's second statement is to contest that the evidence put forward on behalf of NVK shows genuine use of the marks listed in paragraph 11 above.

21. Mr Marsden is a trade mark attorney with Wilson Gunn. His short statement simply places in evidence a decision of the Appointed Person in relation to an appeal in opposition proceedings based on NVK's '473 mark, and the results of a search of the EUIPO's database for marks including the element CLICK & EAT. The latter revealed two applications to register CLICK & EAT in class 43, both subsequently withdrawn. One was by a Swedish company. The other application was filed in the name of Katja Vangeneugden.

22. The purpose of Ms Flockhart's third statement is to show that the Swedish company that applied to register CLICK & EAT as an EU mark is part of a business which uses Click & Eat on websites to designate one of the categories of restaurants available at certain commercial locations in Spain, Germany and France.<sup>4</sup>

23. Katja Vangeneugden is a paralegal at Gevers, which represents Subway in the EU. Referring to the other EU trade mark application identified in Mr Marsden's statement, she says that:

*"I applied for this trade mark to test the water on behalf of [Subway] to see if this application would be accepted by the EUIPO."*

24. The application was withdrawn after the EUIPO objected that the mark was excluded from registration on absolute grounds.

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<sup>4</sup> See exhibit JEF12

**SUBWAY'S APPLICATION TO INVALIDATE NVK'S 'CLICK EAT' WORD MARK  
No. 3347473**

25. I will start by examining NVK's application to invalidate NVK's '473 mark. Section 3(1)(b) and (c) of the Act are as follows:

*“(1) The following shall not be registered—*

*(a) -*

*(b) trade marks which are devoid of any distinctive character,*

*(c) trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services,*

*(d) -*

*Provided that, a trade mark shall not be refused registration by virtue of paragraph (b), (c) or (d) above if, before the date of application for registration, it has in fact acquired a distinctive character as a result of the use made of it.”*

26. There is no claim that **CLICK EAT** acquired the distinctive character it may have originally lacked through use prior to 22<sup>nd</sup> October 2018 when the application for registration was filed. Consequently, the proviso to section 3(1) does not apply. The assessment of Subway's case for invalidation must, therefore, be based on the inherent qualities of the contested mark. The matter must be judged at the date of the application for registration.

27. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Act relied upon in these proceedings are derived from an EU Directive. This is why this decision continues to refer to the case law of the EU courts.



28. The case law under section 3(1)(b) and (c) of the Act was set out by Arnold J (as he then was) in *Starbucks (HK) Ltd v British Sky Broadcasting Group Plc.*<sup>5</sup> These are the most relevant points:

- (a) The general interest underlying section 3(1)(c) is that of ensuring that descriptive signs relating to one or more characteristics of the goods or services in respect of which registration as a mark is sought may be freely used by all traders offering such goods or services.
- (b) With a view to ensuring that that objective of free use is fully met, it is not necessary that the sign in question actually be in use at the time of the application for registration in a way that is descriptive. It is sufficient that the sign could be used for such purposes.
- (c) The application of that ground for refusal does not depend on there being a real, current or serious need to leave a sign or indication free and that it is therefore of no relevance to know the number of competitors who have an interest, or who might have an interest, in using the sign in question. It is, furthermore, irrelevant whether there are other, more usual, signs than that at issue for designating the same characteristics of the goods or services referred to in the application for registration.
- (d) The situations specifically covered by section 3(1)(c) of the Act are those in which the sign in respect of which registration as a mark is sought is capable of designating a 'characteristic' of the goods or services referred to in the application. By using the terms 'the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or rendering of the service, or other characteristics of the goods or service', the legislature made it clear, first, that the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service must all be regarded as characteristics of goods or services and, secondly, that that list is not exhaustive, since any other characteristics of goods or services may also be taken into account.

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<sup>5</sup> [2012] EWHC 3074 (Ch)

- (e) The fact that the legislature chose to use the word 'characteristic' highlights the fact that the signs referred to in section 3(1)(c) of the Act are merely those which serve to designate a property, easily recognisable by the relevant class of persons, of the goods or the services in respect of which registration is sought. A sign can be refused registration on the basis of section 3(1)(c) only if it is reasonable to believe that it will actually be recognised by the relevant class of persons as a description of one of those characteristics.
- (f) In addition, a sign is caught by the exclusion from registration in section 3(1)(c) if at least one of its possible meanings designates a characteristic of the goods or services concerned.
- (g) For a trade mark to possess distinctive character, it must serve to identify the product in respect of which registration is applied for as originating from a particular undertaking, and thus to distinguish that product from those of other undertakings.
- (h) The distinctive character of the mark must be assessed, first, by reference to the goods or services in respect of which registration has been applied for and, second, by reference to the perception of them by the relevant public.
- (i) While the criteria for the assessment of distinctive character are the same for different categories of marks, it may be that, for the purposes of applying those criteria, the relevant public's perception is not necessarily the same in relation to each of those categories and it could therefore prove more difficult to establish distinctiveness in relation to marks of certain categories as compared with marks of other categories.

29. Subway points out that The Cambridge Dictionary defines the word 'Click' as meaning "*to carry out a computer operation by pressing a button on the mouse or keyboard.*" The meaning of 'Eat' is obvious. According to Subway, the combination of these words tells the public that by clicking they can obtain food. This objection is directed at the registration of the '473 mark in relation to:

Class 9: Computer software; computer software applications for mobile devices; computer software for the ordering, delivery and payment of food and drink.

Class 35: Retail and wholesale services in connection with the sale of computer software, computer software applications for mobile devices, computer software for the ordering, delivery and payment of food and drink, food, drink, alcoholic beverages, spirits and wine; advertising, marketing and publicity services; loyalty card and discount card membership schemes.

Class 38: Providing access to the internet for the purpose of arranging food and drink delivery and ordering.

Class 39: Transport and delivery services; food and drink delivery services.

Class 42: Creation of software for food and drink ordering and delivery on-line and via electronic mobile devices; Software as a service [SaaS].

Class 43: Provision of food and drink; restaurant, café and cafeteria services; food and drink take-away services; reservation and booking services for food and drink outlets and restaurants, hotels and accommodation; food and drink ordering services.

30. Subway says that all these goods/services are either food, or for ordering, providing, or delivering food. Accordingly, the '473 is said to be descriptive of the quality or intended purpose of the goods/services.

31. Alternatively, Subway claims that **CLICK EAT** is nothing more than a promotional statement indicating the ease of obtaining food and drink online, whether within a restaurant, café, takeaway, or any other location where the consumer is located, including at home. Accordingly, Subway says the mark is devoid of any distinctive character. In this connection, Subway points out that this was the legal basis on which the EUIPO objected to the trade application mentioned in the evidence of Katja Vangeneugden.

32. In support of Subway's claims, Ms Flockhart's first witness statement provides evidence about the use of CLICK & EAT and similar terms. The most relevant show that:

- (1) 'Click & Collect' is an established term through which consumers order goods online and then collect them from a physical store or location.<sup>6</sup>
- (2) 'Click & Reserve', 'Click &/to Book', and 'Click and Deliver' are also used terms to describe processes for online reservation, ordering or delivery of goods/services.<sup>7</sup>
- (3) McDonald's offers a 'Click & Serve' option for customers to order food via an app and have it served/delivered to them in their cars.<sup>8</sup>
- (4) An Uber-Ipsos report published on the website of CNBC-TV18 in December 2019 about the use of prepared meal providers in India was entitled "*Click and eat economy surpasses dining out.*"<sup>9</sup>
- (5) In August 2018, a UK newspaper used the caption "*click and eat!*" for a photograph in an article about the services of Uber Eats.<sup>10</sup>
- (6) An article on the website starmicronics.com in July 2018, which was aimed at restaurant owners about online ordering, concluded with "*here are three reasons why your customers should be able to point, click and eat.*"<sup>11</sup>
- (7) A review of a restaurant posted by someone in Germany on TripAdvisor in 2016 stated that "*At .... they perfected the ordering system via a tablet, no need to wait for a waiter just click and eat.*"<sup>12</sup>

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<sup>6</sup> See exhibit JEF02

<sup>7</sup> See exhibit JEF03

<sup>8</sup> See exhibit JEF03 at page 35

<sup>9</sup> See pages 51/52 of exhibit JEF05

<sup>10</sup> See pages 53/54 of exhibit JEF05

<sup>11</sup> See pages 57 – 60 of JEF05

<sup>12</sup> See page 68 of exhibit JEF05

- (8) A 2015 article on 'London on the Inside' reviewing an app called EatFirst continued "*These guys are seriously fast at getting these hot meals right to you. Order, click and eat.*"<sup>13</sup>
- (9) Shutterstock.com has a 'click&eat' logo available for licence, which it describes as being "*used for businesses like Food Apps, Online restaurants, Eatery, Cuisine Websites, Food Delivery.*" The logo has a high usage score, meaning that download activity has been high relative to other assets in Shutterstock's catalogue.<sup>14</sup>

33. NVK disputes that CLICK EAT is excluded from registration by section 3(1)(b) or (c) of the Act. It accepts that the words CLICK and EAT have the meanings suggested by Subway. It also accepts that the mark is allusive of online services. However, it disputes that the mark is descriptive or non-distinctive. According to NVK, CLICK EAT is not a normal term, or grammatically correct. Rather, it is a shortened phrase coined by Mr Kunnure/NVK. NVK also points out that:

- (1) The mark is CLICK EAT, not CLICK & EAT as per the EU trade mark application filed in the name of Katja Vangeneugden, to which the EUIPO objected on absolute grounds.
- (2) Subway's reliance on use of CLICK & COLLECT and similar terms is irrelevant because each mark must be assessed on its own merits.
- (3) The examples of use of CLICK & EAT identified by Subway do not support its position: it is natural that there will be some third party usage of signs with allusive qualities.
- (4) The application by a Swedish company to register CLICK & EAT as an EU mark in classes 9 and 43 identified in Ms Flockhart's evidence, was accepted by the EUIPO on absolute grounds. It was withdrawn after opposition was filed on relative grounds by Vikas Kunnure, the original proprietor of the '473 mark.

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<sup>13</sup> See pages 70 – 72 of exhibit JEF05

<sup>14</sup> See pages 62/63 of exhibit JEF05

(5) Mr Daniel Alexander KC, as the Appointed Person, upheld an appeal against the registrar's rejection of an opposition filed by Vikas Kunnure to an application to register a figurative trade mark including the words/numeral 'Now Click 2 Eat' on the basis of a conflict with earlier trade mark 3124473 (Click-EAT in red - shown after paragraph 11 above).<sup>15</sup>

34. Having decided to set aside the Hearing Officer's decision because it included an error, Mr Alexander re-evaluated the likelihood of confusion for himself. As to the distinctiveness of the earlier mark, he found that:

*"...I agree with the hearing officer that the marks are not particularly distinctive. The majority of the services for which it is registered would be provided at physical premises. Typical use of both marks would be on signs, menus, till receipts and so on. In respect of services so provided, the "click" element would not be descriptive. However, they are more descriptive in respect of such services provided over the internet (such as ordering take-away food). Nonetheless, I am not persuaded that the common elements of the marks are so non-distinctive that, if confusion was otherwise likely, this would avoid it for all or some of the services simply because they were provided on-line. Moreover, it was not suggested in this case that different arguments should apply to different services and I have therefore approached this re-evaluation on the basis that there is no distinction although, should the issue arise in any other context (for example were the earlier mark to be asserted in respect of services provided over the internet), this point may need to be considered again with the benefit of proper evidence."*

35. NVK naturally emphasises Mr Alexander's assessment that Click-EAT (in red) was not so descriptive as to deprive it of any distinctive character, even in relation to online restaurant services. For its part, Subway points out that Mr Alexander's decision related to a different trade mark, that he accepted the words Click-EAT were more descriptive of online services, and noted that this point may need to be reconsidered in future with the benefit of evidence.

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<sup>15</sup> See BL O/485/17

36. I agree with Subway that Mr Alexander's decision cannot be regarded as decisive of its application to invalidate the '473 mark. I must make my own decision about that, taking account of what Mr Alexander said about a similar mark, the evidence before me, and the written arguments of these parties.

37. One of those arguments relates to the attributes of the relevant average consumer. Subway's written arguments include a submission that the average consumer is a member of the public paying an above average degree of attention. This is justified on the basis that the goods/services relate to food/drink for consumption, and consumers are naturally concerned about things they consume. It is not open to Subway to make this argument. This is because its application for invalidation pleads that the relevant average consumer is a member of the general public paying a normal degree of attention, and no application has been made to amend Subway's pleadings.

38. NVK submits (for the purposes of its application to invalidate Subway's '868 mark on relative grounds), that the average consumer is a member of the general public paying a normal degree of attention.

39. In point of fact, the average consumer of the services in class 42 of the '473 registration – "*Creation of software for food and drink ordering and delivery etc.*" seems more likely to be a business than a member of the public. Similarly, users of the contested goods/services in classes 9, 35, 38 & 39 could include business users, such as restaurants. The identity of the relevant average consumer is a question of fact (as opposed to a point of law). I am mindful that I should accept facts about which the parties appears to agree. Therefore, having regard to Subway's pleadings and NVK arguments, I will approach the matter on the basis that the average consumer, whether a member of the public or a business user, will pay an average or 'normal' degree of attention when selecting the goods/services.

40. In written submissions dated 3<sup>rd</sup> November 2022, NVK accepted that "*Click brings to mind a quick service and it may also bring to mind clicking a cursor using a computer mouse.*" The evidence shows that CLICK is in fact understood by consumers as describing a simple and quick screen-based process for online ordering of goods/services. EAT is plainly descriptive of goods/services connected with ordering

food to eat. The real question is whether the combination is also descriptive. In *Campina Melkunie BV and Benelux-Merkenbureau*<sup>16</sup> the CJEU stated that:

*“39. As a general rule, the mere combination of elements, each of which is descriptive of characteristics of the goods or services in respect of which registration is sought, itself remains descriptive of those characteristics within the meaning of Article 3(1)(c) of the Directive even if the combination creates a neologism. Merely bringing those elements together without introducing any unusual variations, in particular as to syntax or meaning, cannot result in anything other than a mark consisting exclusively of signs or indications which may serve, in trade, to designate characteristics of the goods or services concerned.*

*40 However, such a combination may not be descriptive within the meaning of Art.3(1)(c) of the Directive, provided that it creates an impression which is sufficiently far removed from that produced by the simple combination of those elements. In the case of a word mark, which is intended to be heard as much as to be read, that condition will have to be satisfied as regards both the aural and the visual impression produced by the mark.*

*41 Thus, a mark consisting of a neologism composed of elements, each of which is descriptive of characteristics of the goods or services in respect of which registration is sought, is itself descriptive of those characteristics within the meaning of Art.3(1)(c) of the Directive, unless there is a perceptible difference between the neologism and the mere sum of its parts: that assumes that, because of the unusual nature of the combination in relation to the goods or services, the word creates an impression which is sufficiently far removed from that produced by the mere combination of meanings lent by the elements of which it is composed, with the result that the word is more than the sum of its parts.”*

41. There could be no doubt that the longer term ‘Click here to order food to eat’ would be descriptive of a characteristic of food ordering software and services. NVK’s case

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<sup>16</sup> Case C-265/00



is, essentially, that CLICK EAT is not a natural shortening of this (or any other descriptive) term, would not immediately convey a clear and specific meaning to consumers, and/or that the mark exhibits an unusual syntax giving it an elliptical nature. I accept that CLICK EAT is a very concise way of conveying the message 'Click here to order food to eat' or similar terms. Nevertheless, I consider that in the context of a screen-based ordering system, relevant average consumers would immediately understand the mark to mean 'click [here to] eat [this product]'. Admittedly, this conclusion would be more straightforward if the mark was CLICK [TO or AND or THEN] EAT. In my view, average consumers will perceive the mark as 'CLICK, EAT', which they will probably regard as a (further) shortening of one of those terms. The conciseness of the words is likely to be attributed to the provider's desire to project the simplicity of its ordering system.<sup>17</sup> This finding is consistent with the evidence of CLICK & EAT being used in commerce. It is true that some of this use is outside the UK and/or after the relevant date. Nevertheless, it suggests that users of the term expect English speakers to understand what it means in the context of e-commerce.

42. In *AS v Deutsches Patent – und Markenamt*<sup>18</sup> the CJEU held that all the relevant facts and circumstances must be taken into account when examining the distinctive character of a trade mark. In the absence of other indications, this means taking into account the types of use which, in the light of the customs in the sector concerned, can be "*practically significant.*" It follows that the reaction of average consumers to uses of the mark which are possible in theory, but unlikely in practice, do not need to be factored into the assessment. However, commercially significant uses, which include online and on-screen ordering, do need to be considered.

43. In my view, CLICK EAT designates the intended purpose and simplicity of use of goods/services for online or onscreen ordering of meals, including complementary drinks. This finding relates to *computer software for the ordering, delivery and payment*

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<sup>17</sup> In this connection, Subway points out that NVK's click-eat.co.uk website says, in relation to its mobile apps, that "*Click-EAT as an idea was also conceived to cement the potent gap between Eateries... and Patrons... so that it becomes as simple as 'Click' and 'Eat.'*" See exhibit JEF04.

<sup>18</sup> Case C-541/18

*of food and drink in class 9, creation of software for food and drink ordering and delivery on-line and via electronic mobile devices in class 42, and retail and wholesale services in connection with the sale of, computer software for the ordering, delivery and payment of food and drink, food, drink, alcoholic beverages, spirits and wine in class 35*

44. As these descriptions are covered by some of the broader descriptions in those classes, to which the argument must, therefore, equally apply, I find the section 3(1)(c) ground succeeds in relation to:

Class 9: Computer software; computer software applications for mobile devices; computer software for the ordering, delivery and payment of food and drink.

Class 35: Retail and wholesale services in connection with the sale of computer software, computer software applications for mobile devices, computer software for the ordering, delivery and payment of food and drink, food, drink, alcoholic beverages, spirits and wine;

Class 42: Creation of software for food and drink ordering and delivery on-line and via electronic mobile devices; Software as a service [SaaS].

45. I further find that CLICK EAT designates the intended purpose and simplicity of use of the following services in class 43 where orders are placed online or onscreen:

Provision of food and drink; restaurant, café and cafeteria services; food and drink take-away services; reservation and booking services for food and drink outlets and restaurants; food and drink ordering services.

46. *Loyalty card and discount card membership schemes* include electronic card based services through which food can be ordered at a discount, or credit built up through food orders, which can be used to obtain discounts on future such orders. These services are, therefore, likely to be perceived by average consumers as an aspect of an online food ordering service. Consequently, the contested mark will also be perceived as descriptive of these services and the section 3(1)(c) ground again

succeeds. Further, as these services are a sub-set of *marketing* services, the section 3(1)(c) ground also succeeds against the broader term.

47. *Providing access to the internet for the purpose of arranging food and drink delivery and ordering* in class 38 covers the provision of network access for the purpose of ordering food, such as in a restaurant or takeaway where food is ordered via a mobile app or a tablet. In my view, the descriptiveness of the contested mark for these services will, therefore, be apparent to average consumers. Consequently, the section 3(1)(c) ground succeeds against these services too.

48. As any user of takeaways will know, the *food and drink delivery services* in class 39 are often commercially viewed as part and parcel of an online food ordering service. The average consumer will not, therefore, draw a distinction between the descriptiveness conveyed by the mark in relation to the food ordering process and the subsequent delivery of the ordered food.<sup>19</sup> Consequently, I find that the section 3(1)(c) ground also succeeds in relation to *food and drink delivery services*, as well as the broader description *transport and delivery services*.

49. The descriptiveness objection is harder to sustain for services where orders are not placed non-online or onscreen. However, with the use of online ordering and/or tablets provided by restaurants having existed at the relevant date, and the likelihood of these tools becoming increasingly popular in the future, I am satisfied that there were, and are, sufficient commercially significant uses of the mark that would be perceived as descriptive to justify upholding the section 3(1)(c) ground.

50. This leaves:

Class 35: Advertising and publicity services.

Class 43: Reservation and booking services for hotels and accommodation.

51. The average consumer will not perceive the contested mark as descriptive of characteristics of these services because they do not directly relate to eating meals.

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<sup>19</sup> See the similar decision of Mr Geoffrey Hobbs Q.C. as the Appointed Person in *Fourneaux De France Trade Mark*, Case BL-O/240/02.

52. If I am wrong about the contested mark being perceived as descriptive of the goods/services listed in paragraphs 43 – 48, then I am satisfied that average consumers would nevertheless perceive it as an origin-neutral term serving only to promote food and drink related goods/services by emphasising the simplicity of use of an online or screen-based food ordering system and the resulting ease with which consumers may obtain a meal. Such consumers would not perceive the mark as (also) distinguishing the goods/services as being those of a particular undertaking.<sup>20</sup> I therefore also uphold the section 3(1)(b) ground in relation to the goods/services listed in paragraphs 43 – 48.

53. The relationship between the mark and the services listed in paragraph 50 is too remote for the same to apply to these services. Therefore, the section 3(1)(b) ground also fails so far as these services are concerned.

**NVK’S APPLICATION TO INVALIDATE THE ‘SUBWAY CLICK & EAT’ WORD MARK No. 918260868**

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

*“(2) A trade mark shall not be registered if because—*

*(a) –*

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

55. In the light of my decision to partially invalidate NVK’s ‘473 trade mark, NVK can no longer rely on the registration of that mark in relation to the goods/services listed in paragraphs 43 – 48. It can still rely on the ‘473 mark in relation to the services listed in paragraph 50.

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<sup>20</sup> In the same way that the Appointed Person held that ‘We create space’ and ‘No wires no worries’ were origin neutral in the decision published at BL O/353/10

56. NVK's earlier '479 mark is not subject to an attack on its validity. It is not open to an application for revocation for non-use under section 46 of the Act because it had not been registered for 5 years at the (deemed) filing date of the '868 mark (24<sup>th</sup> June 2020). For the same reason, NVK's reliance on this mark is not subject to the proof of use requirements in section 47(2A) of the Act. This means that NVK can rely on the '479 mark in relation to all the services in classes 35 and 43 for which it is registered. The marks and goods/services at issue are shown below.

Contested Mark	NVK's Earlier Marks
<p><b>SUBWAY CLICK &amp; EAT</b></p> <p>Class 35: Retail and wholesale services relating to food and drink, including prepared meals; processing purchase orders; customer loyalty and loyalty card services; on-line ordering services in the field of restaurant take-out and delivery; loyalty, incentive and bonus program services; provision of information, advisory and consultancy services in relation to the aforesaid services.</p> <p>Class 43: Restaurant services, namely providing of food and beverages for consumption on and off the premises; restaurant services featuring sandwiches; catering services; eat-in and take-out food restaurant services; provision of information, advisory and consultancy services in relation to the aforesaid services.</p>	<p><b>CLICK EAT ('473 MARK)</b></p> <p>Class 35: Advertising and publicity services.</p> <p>Class 43: Reservation and booking services for hotels and accommodation</p>
	('479 mark)



Class 35: Retail and wholesale services in connection with the sale of computer software for the ordering, delivery and payment of food and drink, food, drink, alcoholic beverages, spirits and wine; advertising, marketing and publicity services; loyalty card and discount card membership schemes.

Class 43: Provision of food and drink; restaurant, café and cafeteria services; food and drink take-away services; reservation and booking services for food and drink outlets and restaurants, hotels and accommodation; food and drink ordering services.

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

#### *The principles*

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

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

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

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

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

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

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

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

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

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

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

### **Comparison of services**

58. I will first compare the services covered by the contested trade mark and the services for which NVK's earlier '473 mark is still entitled to protection. None of the respective services in classes 35 and 43 are the same. In assessing whether they are similar, I take account of the guidance of the CJEU in *Canon* where the court stated:

*"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."*

59. The *customer loyalty and loyalty card services* and *incentive and bonus program services* in class 35 of the specification of the contested mark are examples of marketing services. They are similar in purpose to *advertising* services for which the '473 mark remains protected. This is because, although different, both services are intended to increase sales of goods/services. They are also aimed at the same users. I find they are similar to a medium degree. None of the other services in class 35 are similar.

60. *Reservation and booking services for hotels and accommodation* in class 43 of the '473 mark does not cover bookings for restaurant services, or any of the other services covered by the contested mark. Consequently, the purpose of these services differs to the services covered by class 43 of the contested mark, including *restaurant* services. Further, they are not complementary services within the meaning of the case



law.<sup>21</sup> The most that can be said is that hotels usually have restaurants, and booking a hotel through a hotel booking service may lead to the user booking a table in its restaurant. The subsequent booking would usually be made with the hotel itself rather than the initial hotel booking service provider, if different. I find there is only a low degree of similarity between these services. None of the other services in class 43 are similar.

61. Turning to the comparison between the services covered by the contested mark and the earlier '479 mark, Subway accepts the *retail and wholesale services relating to food and drink, including prepared meals* covered by class 35 of the contested mark are identical to *retail and wholesale services in connection with the sale of, food, drink, alcoholic beverages, spirits and wine*, covered by the '479 mark.

62. Subway also accepts that *on-line ordering services in the field of restaurant take-out and delivery* in class 35 are similar to restaurant and take-out services in class 43. In my view, *processing purchase orders; customer loyalty and loyalty card services; loyalty, incentive and bonus program services; provision of information, advisory and consultancy services in relation to the aforesaid services* in class 35 – are part and parcel, or complementary services, to *retail and wholesale services relating to food and drink, including prepared meals* in class 35 and/or restaurant and take-out services in class 43. Additionally, *retail and wholesale services relating to computer software for the ordering, delivery and payment of food and drink*, covered by the '479 mark, appear to be in competition with *processing purchase orders* and *on-line ordering services in the field of restaurant take-out and delivery* in the class 35 specification of the contested mark. This is because a user may choose to procure ordering/processing services from a third party, or purchase the necessary computer software from a retailer to perform those functions itself. I find all these services similar to at least a medium degree.

63. The respective services in class 43 are self-evidently identical or (in the case of Subway's *provision of information, advisory and consultancy services in relation to the*

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<sup>21</sup> See, for example, the General Court's decision in *Boston Scientific Ltd v OHIM*, Case T-325/06

*aforesaid services*) highly similar (to, at least, *reservation and booking services for food and drink outlets and restaurants and food and drink ordering services*).

### **Average consumer and the selection process**

64. I earlier found that the relevant average consumer is a member of the general public, or a business, paying a normal or 'average' degree of attention during the selection process.

65. The selection process is likely to be primarily a visual one, e.g. external and internal signage, internet sites, mobile apps etc. However, oral recommendations and telephone orders may also play some part in the selection process. The most important thing, therefore, is how the marks look, but the way they sound must also be considered.

### **Distinctive character of the earlier marks**

66. The '473 mark is not descriptive of the services in classes 35 and 43 that have survived Subway's invalidation application. It has an average level of distinctiveness for these services.

67. The '479 mark is a composite mark composed of a stylised cooking pot bearing the words 'Click-EAT'. It also includes a small device, probably intended to represent steam escaping from the pot and the device of an arrow, such as one would find onscreen controlled by a computer mouse. For the reasons I have already given, the words Click-EAT are devoid of distinctive character in relation to most of the services for which the mark is registered. For these services, the distinctive character of the mark therefore rests on the combination of the stylised device of the cooking pot (which is not particularly distinctive for food related services), the words Click-EAT presented as such, and the arrow device (which is also low in distinctiveness in relation to online or onscreen ordering services, and the services to which they relate). The small device of steam escaping from the side of the cooking pot is likely to make a negligible impact on average consumers (meaning that it may be missed altogether). Considered as a whole, I find the '479 mark has a low degree of inherent

distinctiveness for most of the services for which it is registered, which has not been enhanced through use.

68. In respect of the services shown at paragraphs 50 and 57, and considered at paragraph 66 above, the '479 mark also has an average level of distinctiveness.

### **Comparison of marks**

69. NVK claims the contested mark is highly similar, visually, aurally and conceptually, to the earlier '473 mark. Subway denies this.

70. NVK points out that the '473 mark is comprised of the words CLICK and EAT, and in its view, those same words are an essential feature of the contested mark because they appear, in the same order, in that mark.

71. However, as Subway points out, the contested mark starts with SUBWAY, which is absent from the earlier marks. As this word appears at the beginning of the contested mark, it cannot be missed or overlooked. The contested mark also includes an ampersand between CLICK and EAT. However, I accept this makes only a minor contribution to the visual impression created by the contested mark. Overall, I find the '473 mark and the contested mark are visually similar to a medium degree.

72. The contested mark will be pronounced SUB-WAY-CLICK-AND-EAT. The '473 mark will be pronounced CLICK-EAT, which is obviously much shorter. Also the beginnings of the marks are different, which is impossible to miss. On the other hand, the contested mark includes the words CLICK and EAT in the same order. Overall, I find the '473 mark has a low to medium degree of aural similarity to the contested mark.

73. Subway submits that the '473 mark will convey the concept that by clicking, the user can obtain something to eat. According to Subway, the contested mark will convey the concept of a SUBWAY (the brand) online food service, or something underground linked with an online food service.

74. I find that CLICK EAT and CLICK & EAT will convey the same concept - that by clicking the user can obtain something to eat. The trade mark significance of the word

SUBWAY is irrelevant to the conceptual comparison of the marks for the reasons I explained in paragraphs 52 – 61 of my decision in *Extinction Rebellion*.<sup>22</sup> I accept that the ordinary meaning of SUBWAY (underground) is relevant and that, conceptually, this distinguishes the marks to some extent. Overall, I find the ‘473 mark is conceptually similar to the contested mark to a medium degree.

75. Similar considerations apply to the comparison between the contested mark and the words Click-EAT in the ‘479 mark. However, the additional visual elements of the ‘479 mark, which are absent from the contested mark, reduces the level of visual similarity between these marks to ‘low’.

### **Likelihood of confusion**

76. According to NVK, the similarities between the contested mark and the earlier marks will result in indirect confusion. In the case of the ‘473 mark, average consumers will think that the user of SUBWAY CLICK & EAT is, or is connected to, the user of the CLICK EAT word mark.

77. In *L.A. Sugar Limited v By Back Beat Inc*,<sup>23</sup> 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*

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<sup>22</sup> See BL O/214/22

<sup>23</sup> Case BL O/375/10

*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).”*

78. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors*,<sup>24</sup> Arnold LJ referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria*,<sup>25</sup> where he said at [16] that “*a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion.*” Arnold LJ agreed, pointing out that there must be a “*proper basis*” for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion. It is not sufficient that a mark merely calls another mark to mind. This is mere association not indirect confusion.<sup>26</sup>

79. The high point of NVK’s case based on the ‘473 mark is that it is visually similar to the contested mark to a medium degree because the latter contains the words CLICK EAT, which also adds some conceptual similarity. Set against this:

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<sup>24</sup> [2021] EWCA Civ 1207

<sup>25</sup> BL O/219/16

<sup>26</sup> *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17

(1) The respective services are dissimilar, except in relation to *customer loyalty and loyalty card services* and *incentive and bonus program services* in class 35 and *restaurant services* in class 43, which are similar to a 'medium' and 'low' degree, respectively to *advertising services* in class 35 and *reservation and booking services for hotels and accommodation* in class 43;

(2) The words CLICK EAT are not highly distinctive in relation to the services in classes 35 and 43 for which the '473 mark is validly registered;

(3) Average consumers will perceive the words CLICK & EAT in the contested mark as descriptive and non-distinctive in relation to the services in classes 35 and 43 covered by the contested mark, which will help to avoid any trade mark significance being attached to the visual and conceptual similarities with the '473 mark;

(4) The word SUBWAY will, therefore, be regarded as the dominant and distinctive element of the contested mark in relation to the services which are similar to those for which the '473 mark is validly registered.

80. In these circumstances I find there is no likelihood of confusion, including indirect confusion, between the contested mark and the earlier '473 mark.

81. NVK's case for the '479 mark is again based on the likelihood of indirect confusion. i.e. that average consumers will perceive the '479 mark as essentially a Click-EAT mark, and will be caused to believe that SUBWAY CLICK & EAT is the same mark, or a variant version of it, used in conjunction with the SUBWAY 'house' mark.

82. If NVK is right about that, it does not matter whether consumers will perceive the '479 as being connected with Subway, or Subway's contested mark as being connected with the user of the '479 mark. Confusion in either direction is sufficient to found an objection by the proprietor of the earlier trade mark.<sup>27</sup>

83. There is no dispute that some of the services covered by the contested mark are identical to some of the services covered by the earlier '479 mark, e.g. *retail and*

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<sup>27</sup> See, by analogy with section 10(2) of the Act, *Comic Enterprises Ltd v Twentieth Century Fox Film Corporation* [2016] EWCA Civ 41.

*wholesale services relating to food and drink, including prepared meals.* I remind myself that where the services are identical or highly similar, a lesser degree of similarity between the marks may be sufficient to create a likelihood of confusion.

84. On the other hand, the '479 mark is less visually similar to the contested mark than the '473 mark because it includes figurative elements, particularly the stylised cooking pot device. Further, the word element of the '479 mark is presented as Click-EAT, which adds nothing to NVK's contention that the CLICK & EAT element of SUBWAY CLICK & EAT will be perceived as giving that mark a familial connection to the '479 mark.

85. More importantly, the similar elements - the words Click-EAT/CLICK & EAT - will be perceived as descriptive and non-distinctive in relation to the parties' identical or highly similar services in classes 35 and 43.

86. A registered trade mark, such as the '479 mark, must be treated as having at least a minimum degree of distinctive character.<sup>28</sup> However, that does not mean that an element contained in a registered composite mark must be treated as distinctive. There are a great many registered marks which include components that are plainly descriptive or non-distinctive.

87. In *Face2FaceHR Partners Limited v Peninsula Business Services Limited*,<sup>29</sup> Emma Himsworth KC, as the Appointed Person, reviewed the case law in *Whyte and Mackay v Origin*<sup>30</sup> and *Nicoventures Holdings Limited v The London Vape Co Ltd*.<sup>31</sup> Having done so, she summarised the correct approach when assessing the likelihood of confusion where the only common element between the marks in issue has no or low distinctiveness and concluded:<sup>32</sup>

*“(1) The distinctiveness of the mark as a whole must be assessed, taking into account that a minimum degree of distinctiveness must be acknowledged.*

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<sup>28</sup> *Formula One Licensing BV v OHIM*, CJEU, Case C-196/11P

<sup>29</sup> BL O/0368/23

<sup>30</sup> [2015] EWHC 1271 (Ch)

<sup>31</sup> [2017] EHC 3303 (Ch)

<sup>32</sup> At paragraph 44 of her decision

*(2) The distinctiveness of each of the components of both marks must be assessed with priority being given to the coinciding elements.*

*(3) The focus of the assessment of the likelihood of confusion should be on the impact of the non-coinciding components on the overall impression of the mark.*

*(4) Account must be taken of the similarities/differences in the non-coinciding elements of the marks.*

*(5) A coincidence of an element with a low level of distinctiveness will not usually lead to a likelihood of confusion.*

*(6) There may be a finding of a likelihood of confusion if (a) the non-coinciding elements of the mark are of lower (or equally low) degree of distinctiveness or are of insignificant visual impact and the overall impression is similar; or (b) the overall impression of the marks is highly similar or identical.”*

88. The distinctive character of the contested mark is focussed on the SUBWAY element. I earlier found that the distinctive character of the ‘479 mark rests on the combination of the device of the cooking pot (which is not particularly distinctive for food related services), the words Click-EAT, and the arrow device (which is also low in distinctiveness in relation to online or onscreen ordering services, and, by extension, the services to which they relate). Therefore, it would be fair to say that the non-coinciding elements of the ‘479 mark are also low, or (in the case of the stylised cooking pot) lowish, in distinctive character. However, the distinctive character of the contested mark is clearly loaded on the wholly distinctive SUBWAY element.

89. In these circumstances, I see no reason to depart from the general guidance that *“a coincidence of an element with a low level of distinctiveness will not usually lead to a likelihood of confusion.”*

90. I am satisfied that average consumers will consider the appearance of the words CLICK & EAT in the contested mark as wholly attributable to them describing a characteristic of the services; namely, that meals can be ordered simply and easily through an online or onscreen ordering process. Consequently, no significant proportion of such consumers are likely to believe that the inclusion of those words in



the contested mark indicates that the user of that mark is economically connected to the user of the '479 mark.

91. I find there is no likelihood of confusion, including indirect confusion, between the contested mark and the earlier '479 mark.

## Conclusion

92. NVK's application to invalidate the '868 mark fails.

## SUBWAY'S APPLICATIONS TO REVOKE TRADE MARKS 3124255, 3125681 & 3083646 FOR NON-USE

93. The registered mark is, in each case, the figurative mark shown below.<sup>33</sup>



94. The relevant parts of section 46 of the Act are shown below.

*“(1) The registration of a trade mark may be revoked on any of the following grounds—*

*(a) that within the period of five years following the date of completion of the registration procedure it has not 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, and there are no proper reasons for non-use;*

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<sup>33</sup> The services for which the marks are registered are set out in Annex A.

*(b) that such use has been suspended for an uninterrupted period of five years, and there are no proper reasons for non-use;*

*(2) For the purpose of subsection (1) 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 use in the United Kingdom includes affixing the trademark to goods or to the packaging of goods in the United Kingdom solely for export purposes.*

*(3) The registration of a trade mark shall not be revoked on the ground mentioned in subsection (1)(a) or (b) if such use as is referred to in that paragraph is commenced or resumed after the expiry of the five year period and before the application for revocation is made: Provided that, any such commencement or resumption of use after the expiry of the five year period but within the period of three months before the making of the application shall be disregarded unless preparations for the commencement or resumption began before the proprietor became aware that the application might be made.”*

95. Having regard to section 46(3) of the Act, I shall start by considering whether the marks were put to genuine use in the last of the 5 year periods specified in the applications for revocation, i.e. 29<sup>th</sup> April 2017 – 28<sup>th</sup> April 2022.

96. In *Walton International Ltd & Anor v Verweij Fashion BV*<sup>34</sup> Arnold J (as he then was) summarised the law relating to genuine use 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.

(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.

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<sup>34</sup> [2018] EWHC 1608 (Ch)

(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. Accordingly, affixing of a trade mark on goods as a label of quality is not genuine use unless it guarantees, additionally and simultaneously, to consumers that those goods come from a single undertaking under the control of which the goods are manufactured and which is responsible for their quality.

(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. Internal use by the proprietor does not suffice. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter.

(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.

(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.

(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.

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use.

97. Mr Kunnure's evidence on behalf of NVK is that he came up with the idea of a restaurant booking and reservation, and takeaway and delivery service in 2014, which is when he registered the domain names [www.click-eat.co.uk](http://www.click-eat.co.uk) and [www.click-eat.com](http://www.click-eat.com). He says that *"the concept of the business is that of an online service to allow customers to make restaurant bookings and to make food and drink takeaway and delivery orders. The service includes the provision on-line of restaurant information, including menus, locations, cuisine and facilities."*

98. According to Mr Kunnure, the services are provided from the websites mentioned above. He says the restaurant booking and reservation service was introduced in the UK in August 2019 and the takeaway food ordering service followed in November of that year. Exhibit VK2 to Mr Kunnure's statement consists of extracts from the websites mentioned above. They appear to show a downloadable app for making restaurant bookings. There are also pages which appear to be intended for use by restaurants and takeaway businesses to join the service. Some of the webpages bear the colour version (in red and dark red/purple on a white background) of the '473 mark shown in black and white at paragraph 3 above. It is very similar to the mark registered under 3124255, 3125681 & 3083646, and would undoubtedly constitute an acceptable variant of that mark. However, most of these webpages were clearly downloaded on 6<sup>th</sup> December 2022. This is well after the end of the last relevant period (and after the applications for revocation were filed). Further, Mr Kunnure does not say that the website in question carried the same webpages during the relevant periods. Consequently, I am not prepared to infer as much.

99. The final three webpages in exhibit VK2 have been obtained from the web archive called the WayBack Machine. They appear to show pages from the [eat-click.co.uk](http://eat-click.co.uk)

website as at 21<sup>st</sup> December 2021. This is within the last relevant period. However, some of what is shown on the printouts has clearly been added later because it includes references in the body of the pages to the web archive site. The first page shows a launch page from which users can book a table in a restaurant or order a takeaway service. The next steps are indicated to be 'choose a restaurant', 'book your table', and 'enjoy your dine-in', but there are no copies of these pages in evidence. The next page appears to be promoting a downloadable click-EAT app, which is indicated to be available from Google Play and Apple's App Store. I note that this page includes small, coloured representations of the '473 mark. The third page shows addresses in India and the UK. I note there is a 2021 copyright claim by a company called Rasassi Hospitality Limited.

100. Mr Kunnure claims that the website [www.rasassi.com](http://www.rasassi.com) has a 'click-eat' widget allowing customers to make reservations through the click-eat website. Exhibit VK3 to Mr Kunnure's statement includes two webpages downloaded from the [rasassi.com](http://rasassi.com) website. The webpages relate to a restaurant called Rasassi in Cheshire. They give a UK telephone number for telephone reservations, and an online booking system which is shown to be 'powered by' the '473 mark. However, these pages appear to have been downloaded in November 2022, well after the end of the relevant periods.

101. This means that the only contemporaneous documents in evidence showing which services were provided under the '473 mark (or, by extension, the 3124255, 3125681 & 3083646 marks) during any of the relevant periods, are the final three pages of exhibit VK2.

102. Mr Kunnure says that between August 2019 and 2022, there were at least 1200 restaurant bookings made using the UK click-eat website or the widget described above. Details of these are set out in exhibit VK4. As Mr Kunnure acknowledges, some of them are test bookings. These are identifiable because they are recorded as having been made by Mr Kunnure or 'Vikas' or 'test'. Those made by a person I shall call 'San S' also appear to be tests because of the sheer volume and similar timing of the bookings.

103. All the bookings are for the same restaurant – Rasassi. The vast majority of the bookings are recorded as having been made via the widget. The records include

cancellations as well as bookings. There are many duplicative bookings. For example, a person I shall call 'SP' is recorded as having made 4 bookings for 31<sup>st</sup> January 2020, all at 19.30. The same person made a further 23 bookings for 7<sup>th</sup> February 2020, again all at 19.30. Some of the bookings post-date the end of the last relevant period and, therefore, do not show any use during the relevant periods. NVK has not attempted to distil the information so as to come up with a figure for the number of non-duplicative, non-test bookings. So neither have I. However, I have gone through the records and I am satisfied they show a commercially significant number of bookings via the widget, albeit all at the same restaurant. The number of customer bookings made directly via the click-eat website is harder to work out. These entries appear to be recorded as CUSTOMER WEB or CERA-WEB. The meaning of the former seems obvious. The meaning of the latter is not as clear. There are fewer than 10 bookings recorded via CUSTOMER WEB. There appear to be about 25 customer bookings through CERA-WEB. Nearly all the bookings recorded via CUSTOMER WEB and CERA-WEB were in 2019/2020.

104. Ms Flockhart's second witness statement provided Subway's evidence in response to that of Mr Kunnure. She says that she has been visiting the click-eat.co.uk website intermittently since April 2021 and searching on the website for restaurants in London and, occasionally, Cardiff and Edinburgh. No restaurants were found. Ms Flockhart also provides a copy of a screen grab from the click-eat website taken on 8<sup>th</sup> April 2022.<sup>35</sup> She points out that when clicking on the 'Order Takeaway' button, the user received a 'Coming Soon' response. The terms and conditions page say the site is operated by a company called Click-Eat Ltd.

105. Ms Flockhart files documents from Companies House<sup>36</sup> showing that:

- (1) Mr Kunnure is a shareholder and director of Click-Eat Ltd.
- (2) Click-Eat Ltd went into liquidation in September 2021.
- (3) The liquidator's report of November 2022 expressed concern that the disposal of software to Rasassi Hospitality Ltd may have undervalued the asset.

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<sup>35</sup> See exhibit JEF06

<sup>36</sup> See exhibit JEF07

However, investigation showed that *“whilst a suggestion was made that the platform was operational, no information was held on there being any subscribers.”*

(4) Mr Kunnure, or someone called Vikas Annasaheb Kunnure, with the same birthdate, have been directors, or persons with significant control, of Rasassi Hospitality Ltd since 2018.

106. Ms Flockhart also filed screenshots from the rasassi.com website obtained from the WayBack Machine showing images of webpages from 2019 to April 2022.<sup>37</sup> She does not explain what the purpose of this evidence is. However, I note that none of the pages contain the figurative marks under attack, or any other reference to Click-EAT. This is significant because the widget mentioned above is said to operate from the rasassi website.

107. Section 100 of the Act states that:

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

108. In *Awareness Limited v Plymouth City Council*,<sup>38</sup> Mr Daniel Alexander QC as the Appointed Person stated that:

*“22. The burden lies on the registered proprietor to prove use..... However, 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 (which in many cases will be the Hearing Officer in the first instance) comes to take its final decision, the evidence must be sufficiently solid and*

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<sup>37</sup> See exhibit JEF08

<sup>38</sup> Case BL O/236/13

*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.”*

109. Applying this guidance, I find that NVK has not shown use of the mark registered under 3124255, 3125681 & 3083646 during the relevant periods. The closest the evidence comes to this is a page from the UK click-eat website dated December 2021 in exhibit VK2. This includes a small, coloured, representations of the ‘473 mark, which as I have already noted, is an acceptable variant of the other figurative marks. As noted above, the use appears to be promoting a downloadable click-EAT app, which is indicated to be available from Google Play and Apple’s App Store. However, Mr Kunnure’s evidence provides no information about a click-EAT app. This is not surprising. In circumstances where only one restaurant is claimed to have made its services available via the click-EAT booking system, a downloadable restaurant booking app would clearly have limited appeal. In any event, the registrations under consideration do not cover downloadable software, which falls in class 9.

110. There is no evidence that those members of the public using the widget on the Rasassi.com website to make restaurant bookings would have seen the figurative mark at issue, or the ‘473 mark. The historical webpages from the Rasassi website exhibited to Ms Flockhart’s second witness statement show no such use of these marks, or the words click-EAT. NVK had the opportunity to file in reply to this evidence and conspicuously did not do so.

111. Even if it qualifies as trade mark use, the use of ‘click-eat’ as part of a domain name does not constitute an acceptable variant of the mark registered under 3124255, 3125681 & 3083646. This is because the distinctive character of the mark comes more from the mark as a whole, including the device of a stylised cooking pot. Consequently, the absence of the cooking pot device alters the distinctive character of the used sign ([www.click-eat.co.uk](http://www.click-eat.co.uk)) compared to the registered mark.

112. It follows that, subject to NVK’s case that there were proper reasons for non-use, the mark registered under 3124255, 3125681 & 3083646 should be revoked for non-use.



## SUBWAY'S APPLICATION TO REVOKE TRADE MARK 3124473 FOR NON-USE

113. The '4473 mark is shown below.<sup>39</sup>

Click-EAT

114. Once again, I shall start by considering whether the mark was put to genuine use in the last of the 5 year periods specified in the applications for revocation, i.e. 29<sup>th</sup> April 2017 – 28<sup>th</sup> April 2022.

115. There is no evidence of use of this mark, at least in the form in which it is registered, during the relevant period in relation to the services for which it is registered.

116. The historical pages from the click-eat website in evidence at exhibit VK2 are headed "*Click-EAT -Table booking and Order Takeaway Service.*" However, these words are in the same font as the date adjacent to them at the top of the pages (06/12/22). Consequently, it is not clear whether the heading was present on the original pages. Similarly, it is not clear whether the '473 mark which appears on the final page of exhibit VK2 (including the words Click-EAT in red) was present on the original page, or has been added later. This is because it appears immediately above a file path to the web archive site. It also appears to overlay some of the original content. The last page of exhibit KV2 refers to the 'Click Eat Application' as part of a claim that there were trade mark and other intellectual property rights in the "*Application and user interface.*" However, this appears to be use of the words in relation to the downloadable app for mobiles mentioned on the previous page of exhibit VK2 (as opposed to a restaurant booking service).

117. Therefore, the closest the evidence comes to showing use of the '4473 mark during the relevant period is use of the words 'click-eat' as part of the domain name www.click-eat.co.uk. I accept the omission of the colour red is not enough, by itself, to

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<sup>39</sup> The services for which the mark is registered are shown at Annex A

prevent this constituting use of the '4473 mark. I also accept Mr Kunnure's evidence that the site offered a means of booking a table at the Rasassi restaurant from August 2019. I further accept that any qualifying use of the mark on the click-eat website is likely to have been with the consent of the trade mark proprietor (for most of the period, Mr Kunnure himself).

118. However, I am doubtful whether the use of 'click-eat' simply as part of the domain address [www.click-eat.co.uk](http://www.click-eat.co.uk) constitutes use in accordance with the essential function of the trade mark. After all, the purpose of an online address is to identify the online location of a website, not to distinguish the goods or services offered on that site. It would be different if the evidence also showed use of click-eat on the pages of the website, as a trade mark, in relation to the services at issue. I am not persuaded that it does.

119. In any event, even if this use counts as use of the '4473 mark in relation to a restaurant booking service, I find it does not qualify as genuine use during the relevant period. This is because:

(1) There is no evidence of any promotion of the website to the general public, or anyone else.

(2) The fact that the only restaurant that could be booked through the UK click-eat site is also associated with Mr Kunnure tends to point away from this being a genuine commercial service offered to the public, which would normally entail offering consumers a choice of restaurants to book.

(3) The very small number of bookings made through the click-eat website itself casts further doubt on whether the mere availability of this limited restaurant booking facility would be viewed as "*warranted in the economic sector concerned to maintain or create a share in the market for the services.*"

(4) Despite Mr Kunnure's claim that a takeaway food ordering service was introduced via the website in November 2019, there is nothing in his evidence which particularises or supports his assertion. Mr Kunnure himself says the takeaway service was short lived and closed in March 2020 when the COVID

pandemic hit. The unchallenged evidence of Ms Flockhart is that such a service was not still available when she checked the website in April 2022.

120. It follows that, subject to NVK's case that there were proper reasons for non-use, the '4473 mark should also be revoked for non-use.

### **Proper reasons for non-use?**

121. As noted earlier, NVK's pleaded case is based on "*the COVID pandemic and the direct impact on the hospitality sector.*" However, in his evidence Mr Kunnure added a second reason for non-use – a delay caused by the failure of a software company to deliver the software for the click-eat services. According to Mr Kunnure, the (unnamed) software company was engaged in July 2017 to provide software for a web-based service and mobile software applications for use by customers and restaurant owners. The first version of the software was due to be delivered in May 2019. However, the only software delivered (in April 2019) was the web-based software. A new software supplier was therefore engaged in May 2019. The new software company redeveloped the software between June and August 2019.

122. According to Mr Kunnure, the COVID pandemic impacted his/NVK's business between January 2019 and January 2022. He links this with the closure of the alleged takeaway service in March 2020 and cites "*the closure of restaurants during the various lockdowns throughout 2019 – 2022.*"

123. Ms Flockhart's second witness statement provides information downloaded from the internet about the effects of the pandemic on the restaurant sector.<sup>40</sup> The online food ordering and delivery business called Uber Eats published an article on its website entitled 'Keeping restaurants going through COVID-19'. It said:

*"During 2020, food delivery platforms became more important than ever before to keep restaurants going. One restaurant in London, for example, saw 144 days in 2020 and 137 in 2021 where it was not able to offer indoor dining at all.*

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<sup>40</sup> See exhibit JEF10

*Across the whole of the UK, almost 10,000 restaurants, pubs, and cafes closed in 2020.*

*In our survey, 87% of restaurants told us that Covid-19 had been challenging to their business. On average, restaurants reported seeing their revenue from in-person dining decline by over 20%.”*

124. An article published on the website of another online food ordering and delivery business called Just Eat, in October 2020, stated that:

*“Just Eat Takeaway (JET) said the surge in online food orders caused by the coronavirus pandemic continued into the third quarter, with orders jumping 46 per cent compared to a year earlier.*

*Order growth accelerated from the jump of 32 per cent the European food delivery giant recorded in the first half of 2020.*

*In a trading update this morning, Just Eat Takeaway said that orders in the UK during the third quarter jumped 43 per cent, while orders in Germany jumped 47 per cent.”*

125. In *Armin Häupl v Lidl Stiftung & Co. KG*,<sup>41</sup> the CJEU held that:

*“... Art.12(1) of the Directive must be interpreted as meaning that obstacles having a direct relationship with a trade mark which make its use impossible or unreasonable and which are independent of the will of the proprietor of that mark constitute “proper reasons for non-use” of the mark.”*

126. In *Naazeen Investments Ltd v OHIM*<sup>42</sup> the EU’s General Court held that difficulties in manufacturing a product was not outside the proprietor’s control and therefore did not constitute a proper reason for non-use. The court stated that:

*“66. According to the case-law, ‘proper reasons’ refers to circumstances unconnected with the trade mark proprietor rather than to circumstances*

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<sup>41</sup> Case C-246/05

<sup>42</sup> Case T-250/13

*associated with his commercial difficulties (see, to that effect, judgment of 9 July 2003 in Laboratorios RTB v OHIM — Giorgio Beverly Hills (GIORGIO AIRE), T-156/01, ECR, EU:T:2003:198, paragraph 41). The problems associated with the manufacture of the products of an undertaking form part of the commercial difficulties encountered by that undertaking.”*

127. No application was made to expand the pleaded ‘proper reasons’ for non-use to include difficulties the proprietor says it encountered with an (unnamed) software supplier. It follows that, strictly speaking, there is no need to consider this aspect of NVK’s case. In practice, it would make no difference anyway. This is because it is clear from the case law cited above that ordinary commercial difficulties a proprietor encounters whilst developing a product (or service) do not constitute proper reasons for non-use.

128. As to the effects of the COVID pandemic, there is clearly no merit in NVK’s argument that it necessitated the closure of the alleged click-eat takeaway ordering service. Takeaway services were not closed during the COVID lockdowns. In fact, they experienced substantial growth.

129. It is true that restaurants were required to shut to in-person dining during periods in 2020 and 2021. The evidence indicates that this accounted for about four and half months of both years. This clearly prevented anyone from offering restaurant services during these periods. It is also fair to acknowledge that restrictions were in place at some other times when restaurants were allowed to open. Mr Kunnure gives no evidence that Click-EAT was ever going to be used for a restaurant service. His evidence is that it was going to be used for a restaurant reservation service. The COVID lockdowns in Spring to early Summer 2020 and December 2020 to mid-May 2021 were clearly obstacles outside the proprietor’s control which prevented the provision of a restaurant booking service during these periods. However, this only accounts for around 9 months of the last 5 year period, whereas the marks at issue have been registered since 2<sup>nd</sup> January 2016, or earlier. Further, the evidence does not show that the marks were put into use in the period between the COVID restrictions being finally lifted in mid-May 2021 and the end of the last relevant period in April 2022.

130. Therefore, I do not accept the evidence establishes that if it had not been for the COVID pandemic, the proprietor would have made genuine use of the marks during the relevant periods in relation to restaurant reservation service and takeaway ordering services.

### **Conclusion on the revocation applications**

131. Trade marks 3124255, 3125681 3124473 & 3083646 should be revoked for non-use. Further, as the evidence shows they were liable to revocation from the earliest dates identified by Subway, the revocations should take effect from those dates.

### **OVERALL CONCLUSIONS**

132. NVK's CLICK EAT word Mark (3347473) is partially invalid and the registration of the mark in classes 9, 35, 38, 39, 42 and 43 will be cancelled with effect from 22<sup>nd</sup> October 2018, except in relation to:

Class 9: Electronic publications (downloadable); protective clothing.

Class 35: Computer software for the ordering, delivery and payment of electronic publications (downloadable), protective clothing, printed matter, stationery, publications, books, magazines, brochures, menus, leaflets, brochures, flyers, paper coasters, paper cups, pens, pencils, guidebooks, cook books, household and kitchen utensils, earthenware, mugs, plates, bowls, dishes, porcelain ware, glass ware, pots, pans, cookware, cooking utensils, tableware, place mats, coasters, plastic storage containers, oven gloves, clothing, footwear and headgear, aprons, chef's hats; advertising and publicity services.

Class 38: Telecommunications; provision of on-line chat rooms; providing access to internet blogging services; provision of electronic bulletin boards; providing access to internet forums; communication by electronic mail.

Class 39: Packaging and storage of goods.

Class 42: Design and development of computer software; web hosting services; website development services.

Class 43: Reservation and booking services for hotels and accommodation.

133. Additionally, the '473 mark will remain registered in relation to the goods/services for which it is registered in classes 16, 21, 25, 36 and 41. None of these goods/services were covered by Subway's application for invalidation.

134. NVK's application to invalidate Subway's trade mark 918260868, fails.

135. Subway's applications to revoke trade marks 3124255, 3125681 3124473 & 3083646 succeed. The registration of these marks will be revoked with effect from:

3083646: 28<sup>th</sup> February 2020

3124255, 3125681 & 3124473: 2<sup>nd</sup> January 2021

## **COSTS**

136. Subway has been almost entirely successful and is, therefore, entitled to a contribution towards its costs. I assess this as follows:

£1000 official fees for filing an application for the invalidation of the '473 mark and four applications to revoke the '255, '681 '4473 & '646 marks;

£1000 for completing these applications and considering and filing a counterstatement to Mr Kunnure's application to invalidate the '868 mark;

£1800 for filing evidence and considering the evidence of Vikas Kunnure & Andrew Marsden;

£600 for considering the written submissions filed on behalf of Mr Kunnure/NVK and filing its own written submissions;

-£200 in recognition of the partial failure of Subway's attack on the '473 mark.

137. I therefore order NVK Limited to pay Subway IP LLC the sum of £4200. This to be paid within 21 days of the end of the period allowed for appeal or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings (subject to any order of the appellate tribunal).

**Dated this 4<sup>th</sup> day of January 2024**

**Allan James**  
**For the Registrar**



## **ANNEX A**

### **Trade Mark 3124255**

Class 43: Accommodation (Rental of temporary -); Accommodation reservation services; Accommodation reservation services [time share]; Agency services for booking hotel accommodation; Agency services for reservation of restaurants; Appraisal of hotel accommodation; Banqueting services; Bar services; Booking of hotel accommodation; Booking of hotel rooms for travellers; Cafe services; Cafés; Cafeteria services; Carvery restaurant services; Catering (Food and drink -); Catering services; Coffee shop services; Consultancy services relating to baking techniques; Consultancy services relating to food; Consultancy services relating to food preparation; Consultancy services relating to hotel facilities; Consulting services in the field of culinary arts; Cookery advice; Cooking apparatus (Rental of -); Delicatessens [restaurants]; Drink dispensing machines (rental of); Fast food restaurant services; Fast-food restaurants; Food cooking services; Food preparation; Food preparation services; Food service apparatus (rental of -); Hospitality services [food and drink]; Hotel catering services; Hotel information; Hotel reservation services; Hotel reservations; Hotel room booking services; Hotel room reservation services; Hotel-reservation; Information relating to hotels; Making hotel reservations for others; Mobile restaurant services; Preparation of food and beverages; Preparation of meals; Providing accommodation for functions; Providing accommodation for meetings; Providing hotel accommodation; Provision of food and drink; Provision of food and drink in restaurants; Provision of hotel accommodation; Provision of information relating to bars; Provision of information relating to hotels; Provision of information relating to the booking of accommodation; Provision of information relating to the preparation of food and drink; Rental of drinking water dispensers; Rental of food service apparatus; Reservation of hotel accommodation; Reservation of tourist accommodation; Reservations (Temporary accommodation -); Restaurant information services; Restaurant reservation services; Restaurant services; Restaurants;

Restaurants (self-service-);Restaurants (Self-service -); Room reservation services; Self-service cafeteria services; Self-service restaurants; Serving food and drinks.

### **Trade Mark 3125681**

Class 43: Accommodation reservation services; Agency services for booking hotel accommodation; Agency services for reservation of restaurants; Appraisal of hotel accommodation; Arranging of hotel accommodation; Bar services; Bars; Bistro services; Booking of hotel accommodation; Booking of hotel rooms for travellers; Booking services for accommodation; Booking services for hotels; Cafe services; Cafés; Cafeteria services; Cafeterias; Carvery restaurant services; Catering of food and drinks; Catering services; Club services for the provision of food and drink; Cocktail lounge services; Coffee shop services; Coffee shops; Drink dispensing machines (rental of); Fast food restaurant services; Fast-food restaurants; Food cooking services; Food preparation; Food preparation services; Food service apparatus (rental of -); food takeaway service; Hotel accommodation services; Hotel reservation services; Hotel reservations; Hotel room booking services; Hotel room reservation services; Hotel-reservation; Ice cream parlour services; Marquee hire; Outside catering services; Personal chef services; Preparation of food and beverages; Preparation of meals; Providing accommodation for functions; Providing accommodation for meetings; Providing hotel accommodation; Providing reviews of restaurants and bars; Provision of food and drink; Provision of food and drink in restaurants; Provision of information relating to bars; Provision of information relating to hotels; Provision of information relating to the booking of accommodation; Provision of information relating to the preparation of food and drink; Pubs; Reservation of hotel accommodation; Reservation services for accommodation; Reservations (Temporary accommodation-); Resort hotels; Restaurant information services; Restaurant reservation services; Restaurant services; Restaurants; Restaurants (self-service-);Restaurants (Self-service -); Room reservation services; Salad bars; Self-service cafeteria services; Serving food and drinks; Travel agency services for making hotel reservations; Wine bars.

### **Trade Mark 3083646**

Class 43: Food takeaway service; Provision of foods and drink; Provision of food and drink in restaurants; Provision of information relating to restaurants; Restaurant reservation services; Restaurant services.

**Trade Mark 3124473**

Class 43: Food takeaway service; Providing reviews of restaurants and bars; Provision of food and drink; Provision of food and drink in restaurants; Provision of information relating to restaurants; Restaurant reservation services; Restaurant services.