

O-590-22

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION UK00003623544 BY GOH JOO HIN PTE LTD
TO REGISTER:**

NoNoMeat

AS A TRADE MARK IN CLASS 29

AND

**IN THE MATTER OF OPPOSITION THERETO UNDER NO. 427289
BY THE LIVEKINDLY COMPANY SWITZERLAND GMBH**

Background & Pleadings

1. On 8 April 2021, Goh Joo Hin Pte Ltd (“the applicant”) applied to register the above trade mark in the United Kingdom. Further to a limitation to the specification effective from 6 July 2021, the applicant seeks registration in respect of *meat substitutes; vegetarian meat products* and *plant-based meat substitutes* in class 29. The application was published for opposition purposes on 16 July 2021.

2. On 4 October 2021, No Meat Limited opposed the application, in full, under section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). On 14 March 2022, the registry received notice of an assignment transferring the ownership of the earlier marks from No Meat Limited to The Livekindly Company Switzerland GmbH (“the opponent”) effective from 1 November 2021. The Livekindly Company Switzerland GmbH was subsequently substituted as the opponent in the proceedings and will be referred to as such throughout. The opponent relies upon the following trade marks and all goods and services for which they are registered, as laid out below:

United Kingdom Trade Mark (“UKTM”) 3521892

THE NO MEAT COMPANY

Filing date: 12 August 2020

Registration date: 4 December 2020

Class 29: *Vegan meat; vegetarian meat; vegan burgers; vegetarian burgers; vegan mince; vegan pate; vegan puree; vegetarian sausages; vegan sausages; vegan meat balls; vegetarian meat balls; vegetarian charcuterie; plant-based meat substitutes; soya patties; soya [prepared]; soya bean milk; soya bean curd; dried soya beans; soya bean oil; vegetable protein for use as an additive to foods; tofu; tofu burger patties; prepared vegan and vegetarian products, namely, prepared meals consisting predominately of meat substitutes and/or vegetables and/or beans and/or nuts and/or pulses and/or grains; vegetable soup preparations; vegetarian extracts for cooking; vegetable juice concentrates for food; extracts of vegetables [juices] for cooking; processed fruits, fungi and vegetables (including nuts and pulses); preserved vegetables; dried vegetables; fruit preserves; fruit snacks; snack*

foods predominately consisting of or containing protein, including mycoprotein; ready-made meals; ready-made meals consisting of or containing protein, including mycoprotein, including those with vegetables; dietetic and slimming meals and food bars predominately containing protein, including mycoprotein; prepared frozen meals consisting of or containing protein, including mycoprotein; meat substitutes; vegetable based meat substitute; jellies, jams, fruit preserves, vegetable preserves, compotes; fruit desserts; edible oils and fats; nuts and nut butters; pickles, tofu; food spreads; soups; nut paste; frozen vegetables; frozen fruits; potato crisps; potato chips; potato flakes; potato fritters; potato pancakes; potato dumplings; potato snacks; potato fries; fried potatoes; peeled potatoes; boiled potatoes; mashed potatoes; prepared meals and constituents therefor; snack foods made from seeds; snack foods.

Class 30: Coffee, tea, cocoa, sugar, rice, tapioca, sago, couscous, coffee substitutes, coffee essences, coffee extracts, mixtures of coffee and chicory; chocolate; chocolate products; flour and preparations made from cereals and/or rice and/or flour; bread, biscuits, cookies, cakes, pastry goods, and confectionery, cheesecakes, edible ices; honey, treacle; syrup, molasses; yeast, baking-powder; salt, mustard; vinegar, pepper, sauces, ketchup, salad sauces; spices; chutney; ices and ice lollies; ice cream, water ices, frozen confections; preparations for making ice cream and/or water ices and/or frozen confections; breakfast cereals; pizza, pasta and pasta products; custard powder; mousses; puddings; mayonnaise; royal jelly for human consumption (other than for medicinal purposes); natural sweetener; prepared meals and constituents therefor, snack foods made from rice; snack foods made from cereal; snack foods made from wheat; snack foods made from maize; snack foods made from granola; snack foods made from corn; snack foods made from potato flour; snack foods made from pasta; frozen ices; frozen confectionery; frozen custards; frozen dough; frozen pizzas; frozen cakes; frozen lollipops; frozen pastry; frozen yoghurt confections; frozen dairy confections; ice desserts, prepared desserts, puddings for use as desserts; frozen yoghurt; sorbets; frozen prepared rice; frozen pastry stuffed with vegetables; herbs; frozen pies, fruit pies, pizza pies, apple pies, frozen pot pies, fresh pies, vegetable pies, sweet pies; vegetable flour; vegan based purees [sauces]; vegetable concentrates used for seasoning; vegetable-based seasonings for pasta; pastries consisting of vegetables and vegan meat; frozen pastry stuffed with vegan meat and vegetables; cakes, biscuits and desserts all being vegan; soya based cakes, biscuits and desserts; snack foods made from wheat; wheat protein; wheat flour; prepared frozen meals consisting primarily of flour, rice, pasta, or noodles which include protein, including mycoprotein, and vegetables.

Class 35: Retail services, wholesales services, retail stores services, mail order retail services, electronic or on-line retail services, supermarket and hypermarket services connected with the

sale of vegan meat, vegetarian meat, vegan burgers, vegetarian burgers, vegan mince, vegan pate, vegan puree, vegetarian sausages, vegan sausages, vegan meat balls, vegetarian meat balls, vegetarian charcuterie, plant-based meat substitutes, soya patties, soya [prepared], soya bean products, vegetable protein for use as an additive to foods, tofu, tofu burger patties, prepared vegan and vegetarian products, namely, prepared meals consisting predominately of meat substitutes and/or vegetables and/or beans and/or nuts and/or pulses and/or grains, vegetable soup preparations, vegetarian extracts for cooking, vegetable juice concentrates for food, extracts of vegetables [juices] for cooking, processed fruits, fungi and vegetables (including nuts and pulses), preserved vegetables, dried vegetables, fruit preserves, fruit snacks, savouries predominately consisting of or containing protein, including mycoprotein, ready-made meals, ready-made meals consisting of or containing protein, including mycoprotein, including those with vegetables, dietetic and slimming meals and food bars predominately containing protein, including mycoprotein, prepared frozen meals consisting of or containing protein, including mycoprotein, meat substitutes, vegetable based meat substitute, jellies, jams, fruit preserves, vegetable preserves, compotes, fruit desserts, edible oils and fats, nuts and nut butters, pickles, tofu, food spreads, soups, nut paste, frozen vegetables, frozen fruits, potato crisps and potato products (for food), prepared meals and constituents therefor, snack foods made from seeds, snack foods, coffee, tea, cocoa, sugar, rice, tapioca, sago, couscous, coffee substitutes, coffee essences, coffee extracts, mixtures of coffee and chicory, chocolate, chocolate products, flour and preparations made from cereals and/or rice and/or flour, bread, biscuits, cookies, cakes, pastry goods, and confectionery, cheesecakes, edible ices, honey, treacle, syrup, molasses, yeast, baking-powder, salt, mustard, vinegar, pepper, sauces, ketchup, salad sauces, spices, chutney, ices and ice lollies, ice cream, water ices, frozen confections, preparations for making ice cream and/or water ices and/or frozen confections, breakfast cereals, pizza, pasta and pasta products, custard powder, mousses, puddings, mayonnaise, royal jelly for human consumption (other than for medicinal purposes), natural sweetener, prepared meals and constituents therefor, snack foods made from rice, snack foods made from cereal, snack foods made from wheat, snack foods made from maize, snack foods made from granola, snack foods made from corn, snack foods made from potato flour, snack foods made from pasta, frozen ices, frozen confectionery, frozen custards, frozen dough, frozen pizzas, frozen cakes, frozen lollipops, frozen pastry, frozen yoghurt confections, frozen dairy confections, ice desserts, prepared desserts, puddings for use as desserts, frozen yoghurt, sorbets, frozen prepared rice, frozen pastry stuffed with vegetables, herbs, frozen pies, fruit pies, pizza pies, apple pies, frozen pot pies, fresh pies, vegetable pies, sweet pies, vegetable flour, vegan based purees [sauces], vegetable concentrates used for seasoning, vegetable-based seasonings for pasta, pastries consisting of vegetables and vegan meat, frozen pastry stuffed with vegan meat and vegetables, cakes,

biscuits and desserts all being vegan, soya based cakes, biscuits and desserts, snack foods made from wheat, wheat protein, wheat flour, prepared frozen meals consisting primarily of flour, rice, pasta, or noodles which include protein, including mycoprotein, and vegetables; advertising services; marketing and promotional services; organisation, operation and supervision of sales and promotional incentive schemes and customer loyalty schemes; information, advisory and consultancy services all relating to the aforesaid services.

UKTM 3521896



Filing date: 12 August 2020

Registration date: 4 December 2020

Class 29: Vegan meat; vegetarian meat; vegan burgers; vegetarian burgers; vegan mince; vegan pate; vegan puree; vegetarian sausages; vegan sausages; vegan meat balls; vegetarian meat balls; vegetarian charcuterie; plant-based meat substitutes; soya patties; soya [prepared]; soya bean milk; soya bean curd; dried soya beans; soya bean oil; vegetable protein for use as an additive to foods; tofu; tofu burger patties; prepared vegan and vegetarian products, namely, prepared meals consisting predominately of meat substitutes and/or vegetables and/or beans and/or nuts and/or pulses and/or grains; vegetable soup preparations; vegetarian extracts for cooking; vegetable juice concentrates for food; extracts of vegetables [juices] for cooking; processed fruits, fungi and vegetables (including nuts and pulses); preserved vegetables; dried vegetables; fruit preserves; fruit snacks; snack foods predominately consisting of or containing protein, including mycoprotein; ready-made meals; ready-made meals consisting of or containing protein, including mycoprotein, including those with vegetables; dietetic and slimming meals and food bars predominately containing protein, including mycoprotein; prepared frozen meals consisting of or containing protein, including mycoprotein; meat substitutes; vegetable based meat substitute; jellies, jams, fruit preserves, vegetable preserves, compotes; fruit desserts; edible oils and fats; nuts and nut butters; pickles, tofu; food spreads; soups; nut paste; frozen vegetables; frozen fruits; potato

crisps; potato chips; potato flakes; potato fritters; potato pancakes; potato dumplings; potato snacks; potato fries; fried potatoes; peeled potatoes; boiled potatoes; mashed potatoes; prepared meals and constituents therefor; snack foods made from seeds; snack foods.

Class 30: Coffee, tea, cocoa, sugar, rice, tapioca, sago, couscous, coffee substitutes, coffee essences, coffee extracts, mixtures of coffee and chicory; chocolate; chocolate products; flour and preparations made from cereals and/or rice and/or flour; bread, biscuits, cookies, cakes, pastry goods, and confectionery, cheesecakes, edible ices; honey, treacle; syrup, molasses; yeast, baking-powder; salt, mustard; vinegar, pepper, sauces, ketchup, salad sauces; spices; chutney; ices and ice lollies; ice cream, water ices, frozen confections; preparations for making ice cream and/or water ices and/or frozen confections; breakfast cereals; pizza, pasta and pasta products; custard powder; mousses; puddings; mayonnaise; royal jelly for human consumption (other than for medicinal purposes); natural sweetener; prepared meals and constituents therefor, snack foods made from rice; snack foods made from cereal; snack foods made from wheat; snack foods made from maize; snack foods made from granola; snack foods made from corn; snack foods made from potato flour; snack foods made from pasta; frozen ices; frozen confectionery; frozen custards; frozen dough; frozen pizzas; frozen cakes; frozen lollipops; frozen pastry; frozen yoghurt confections; frozen dairy confections; ice desserts, prepared desserts, puddings for use as desserts; frozen yoghurt; sorbets; frozen prepared rice; frozen pastry stuffed with vegetables; herbs; frozen pies, fruit pies, pizza pies, apple pies, frozen pot pies, fresh pies, vegetable pies, sweet pies; vegetable flour; vegan based purees [sauces]; vegetable concentrates used for seasoning; vegetable-based seasonings for pasta; pastries consisting of vegetables and vegan meat; frozen pastry stuffed with vegan meat and vegetables; cakes, biscuits and desserts all being vegan; soya based cakes, biscuits and desserts; snack foods made from wheat; wheat protein; wheat flour; prepared frozen meals consisting primarily of flour, rice, pasta, or noodles which include protein, including mycoprotein, and vegetables.

Class 35: Retail services, wholesales services, retail stores services, mail order retail services, electronic or on-line retail services, supermarket and hypermarket services connected with the sale of vegan meat, vegetarian meat, vegan burgers, vegetarian burgers, vegan mince, vegan pate, vegan puree, vegetarian sausages, vegan sausages, vegan meat balls, vegetarian meat balls, vegetarian charcuterie, plant-based meat substitutes, soya patties, soya [prepared], soya bean products, vegetable protein for use as an additive to foods, tofu, tofu burger patties, prepared vegan and vegetarian products, namely, prepared meals consisting predominately of meat substitutes and/or vegetables and/or beans and/or nuts and/or pulses and/or grains, vegetable soup preparations, vegetarian extracts for cooking, vegetable juice concentrates for

food, extracts of vegetables [juices] for cooking, processed fruits, fungi and vegetables (including nuts and pulses), preserved vegetables, dried vegetables, fruit preserves, fruit snacks, savouries predominately consisting of or containing protein, including mycoprotein, ready-made meals, ready-made meals consisting of or containing protein, including mycoprotein, including those with vegetables, dietetic and slimming meals and food bars predominately containing protein, including mycoprotein, prepared frozen meals consisting of or containing protein, including mycoprotein, meat substitutes, vegetable based meat substitute, jellies, jams, fruit preserves, vegetable preserves, compotes, fruit desserts, edible oils and fats, nuts and nut butters, pickles, tofu, food spreads, soups, nut paste, frozen vegetables, frozen fruits, potato crisps and potato products (for food), prepared meals and constituents therefor, snack foods made from seeds, snack foods, coffee, tea, cocoa, sugar, rice, tapioca, sago, couscous, coffee substitutes, coffee essences, coffee extracts, mixtures of coffee and chicory, chocolate, chocolate products, flour and preparations made from cereals and/or rice and/or flour, bread, biscuits, cookies, cakes, pastry goods, and confectionery, cheesecakes, edible ices, honey, treacle, syrup, molasses, yeast, baking-powder, salt, mustard, vinegar, pepper, sauces, ketchup, salad sauces, spices, chutney, ices and ice lollies, ice cream, water ices, frozen confections, preparations for making ice cream and/or water ices and/or frozen confections, breakfast cereals, pizza, pasta and pasta products, custard powder, mousses, puddings, mayonnaise, royal jelly for human consumption (other than for medicinal purposes), natural sweetener, prepared meals and constituents therefor, snack foods made from rice, snack foods made from cereal, snack foods made from wheat, snack foods made from maize, snack foods made from granola, snack foods made from corn, snack foods made from potato flour, snack foods made from pasta, frozen ices, frozen confectionery, frozen custards, frozen dough, frozen pizzas, frozen cakes, frozen lollipops, frozen pastry, frozen yoghurt confections, frozen dairy confections, ice desserts, prepared desserts, puddings for use as desserts, frozen yoghurt, sorbets, frozen prepared rice, frozen pastry stuffed with vegetables, herbs, frozen pies, fruit pies, pizza pies, apple pies, frozen pot pies, fresh pies, vegetable pies, sweet pies, vegetable flour, vegan based purees [sauces], vegetable concentrates used for seasoning, vegetable-based seasonings for pasta, pastries consisting of vegetables and vegan meat, frozen pastry stuffed with vegan meat and vegetables, cakes, biscuits and desserts all being vegan, soya based cakes, biscuits and desserts, snack foods made from wheat, wheat protein, wheat flour, prepared frozen meals consisting primarily of flour, rice, pasta, or noodles which include protein, including mycoprotein, and vegetables; advertising services; marketing and promotional services; organisation, operation and supervision of sales and promotional incentive schemes and customer loyalty schemes; information, advisory and consultancy services all relating to the aforesaid services.

3. The opponent contends that there exists a likelihood of confusion due to the visual, phonetic and conceptual similarities between the parties' trade marks and the identity between the goods in the parties' specifications.

4. The applicant accepts that the parties' goods are identical, but submits that the respective marks are either dissimilar, or at least sufficiently dissimilar for there to be no likelihood of confusion.

5. The applicant is represented by HGF Limited and the opponent by Zacco UK Limited. Both parties filed written submissions during the evidential rounds. Neither party requested a hearing, though the opponent elected to file submissions in lieu. Whilst I do not propose to summarise those submissions here, I will keep them in mind throughout and intend to refer to them only where necessary.

6. 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 Trade Marks Act relied on in these proceedings are derived from an EU Directive. This is why my decision will continue to make reference to the trade mark case law of EU courts.

Decision

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

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

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

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

8. Section 5A reads:

“Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only.”

9. An earlier trade mark is defined in section 6 of the Act, which states:

“6. - (1) In this Act an “earlier trade mark” means –

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

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

10. Under the provisions outlined above, the opponent’s trade marks clearly qualify as earlier marks. In accordance with section 6A of the Act, as neither had completed its registration procedure more than five years prior to the filing date of the applicant’s mark, neither is subject to the proof of use requirements. Consequently, the opponent can rely upon both marks and all goods and services it has identified without providing evidence of use.

Section 5(2)(b) - Case law

11. The following principles are gleaned from the decisions of the courts of the European Union in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case C-3/03, *Medion AG v.*

Thomson Multimedia Sales Germany & Austria GmbH, Case C-120/04, Shaker di L. Laudato & C. Sas v OHIM, Case C-334/05P and Bimbo SA v OHIM, Case C-591/12P.

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 greater degree of similarity between the marks, and vice versa;

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

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

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

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

Comparison of goods and services

12. The following goods of class 29 are present in both parties' specifications and are, self-evidently, identical:

Meat substitutes; plant-based meat substitutes

13. The General Court ("GC") set out a further provision as to when goods can be considered identical in *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T-133/05. It stated:

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

14. Applying that principle, I consider the opponent's *vegetarian meat* to be covered by the applicant's *vegetarian meat products* and is, therefore, identical. Additionally, the applicant's *vegetarian meat products* encompasses, for example, the opponent's *vegetarian meat balls*. The goods are identical.

The average consumer and the nature of the purchasing act

15. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

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

16. The average consumer of the goods at issue here is likely to be a member of the general public. The goods are typically self-selected from a traditional retail establishment such as a supermarket, or an online equivalent. The goods are purchased fairly frequently and are generally inexpensive. The average consumer will typically be alive to factors such as ingredients and nutritional value. The marks' visual impression is likely to play the greater role in the selection process, though I do not overlook the relevance of its aural impression, given that direction could be sought from retail assistants, for example. Weighing all factors, I find it likely that the average consumer will apply between a low and medium degree of attention to the purchase.

Comparison of trade marks

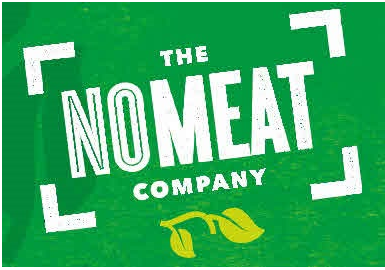
17. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall

impressions created by them, bearing in mind their distinctive and dominant components. The CJEU stated in *Bimbo SA v OHIM*, Case C-591/12P, that:

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

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

19. The trade marks to be compared are displayed in the table below:

Opponent's mark(s)	Applicant's mark
<p data-bbox="225 1283 882 1328">THE NO MEAT COMPANY</p> 	<p data-bbox="975 1442 1326 1503">NoNoMeat</p>

20. The opponent's word-only mark comprises four words of three, two, four and seven letters, respectively. The overall impression lies in the mark as a whole, with the words forming a unit. Whilst none of the words appear more dominant than the others, 'THE'

will likely be seen as a qualifying element and 'COMPANY' as an indication of a business entity.

21. In the opponent's figurative mark, the words 'THE NO MEAT COMPANY' are positioned at a slight angle within four pointed corners, both presented in white, with a depiction of two pale green leaves sitting below. The elements are displayed atop a rectangular green background, with a leaf detail in a darker shade of green. The largest of the word elements are 'NO MEAT'; 'THE' and 'COMPANY' are positioned centrally but in a notably smaller font. In the word 'NO', there is a fine green line running through the centre of the letters. In regard to its overall impression, the mark's figurative elements play a roughly equal role with its text, though 'NO MEAT' are the most dominant of the words on account of their size.

22. The applicant's mark is presented as a single word of eight letters. Though it will be recognised as a combination of three distinct words, particularly on account of the adopted capitalisation, none of the words are more dominant than the others. The mark's overall impression lies in the word itself; in the unit created by the words it comprises.

The opponent's word-only mark

23. Visually, both marks incorporate the words 'NO' and 'MEAT' (albeit absent of a space in the applicant's mark). In the earlier mark, those words are positioned between 'THE' and 'COMPANY' and in the later mark, the word 'NO' is duplicated, and the mark's three words are conjoined to create a single word. Little hangs on the variation between the marks' upper and lower casing as the registration of word only marks allow for their use in different cases and typefaces, provided the distinctive character is unaltered. I find the visual similarity to be between a low and medium degree.

24. Aurally, the opponent's mark will be articulated in six syllables; THE-NO-MEET-CUMP-AN-EE. The applicant's will likely be articulated in three syllables; NO-NO-MEET. The marks share identical syllables in NO-MEET, in the same order, but there is one additional syllable in the application and four in the earlier mark with little similarity. I find the aural similarity to be fairly low.

25. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer¹. Conceptually, the opponent's mark will convey an impression of a company specialising in goods which do not contain meat. Whilst the applicant's mark is absent of the 'company' element, it will nonetheless point towards goods which do not contain meat. Although it is presented as a single word, I am confident that the average consumer will understand it as an amalgamation of three words; NO, NO and MEAT; with NO being used twice as a means of emphasis. I have considered whether the duplication of NO will, linguistically, be viewed as an indication that the goods do, in fact, contain meat; i.e. acting as a double negative. In my view, this is much less likely an interpretation. In my experience, the term 'NO-NO' can be used in respect of something highly objectionable, with the duplication intended to maximise impact. With that in mind, I will proceed on the basis that the marks are, conceptually, highly similar.

The opponent's figurative mark

26. Visually, the marks coincide in the words 'NO' and 'MEAT'. Not only is there an additional 'NO' in the applicant's mark but the opponent's mark comprises an additional two words and a number of figurative elements, described above, which are absent in the application. Weighing what I have said regarding the marks' overall impressions against those findings, notwithstanding what I have found to be the most dominant of the earlier mark's word elements, I find the visual similarity to be low.

27. Aurally, I find the opponent's figurative mark is likely to be articulated in the same way as its word only mark because the figurative elements have no aural characteristics, therefore my prior reasoning applies. I find the aural similarity fairly low.

28. The figurative details in the opponent's mark serve to reinforce the concept offered in its word elements; the words point towards a company offering goods which are free of meat and the green background and leaves symbolise, in my experience, a

¹ *Ruiz Picasso v OHIM* [2006] e.c.r.-I-643; [2006] E.T.M.R 29

'greener' or plant-based lifestyle which could incorporate a meat-free diet. Given what I have said about the likely concept conveyed by the applicant's mark, I find the conceptual similarity with the applicant's mark to be of a high degree.

Distinctive character of the earlier trade mark

29. The distinctive character of a trade mark can be appraised only, first, by reference to the goods in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97, the CJEU stated that:

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

30. Registered trade marks possess varying degrees of inherent distinctive character. These range from the very low, such as those which are suggestive or allusive of the goods or services for which they are registered, to those with high inherent distinctive

character, such as invented words. Dictionary words which do not allude to the goods or services will typically fall somewhere in the middle. The degree of distinctiveness is an important factor as it directly relates to whether there is a likelihood of confusion; generally, the more distinctive the earlier mark, the greater the likelihood of confusion. The distinctive character of a mark may be enhanced as a result of it having been used in the market.

31. Given that the opponent has not made a pleading of enhanced distinctiveness, and in the absence of evidence of use, I have only the inherent distinctiveness of the earlier marks to consider. The opponent's word only mark, as I have already found, conveys an impression of a company specialising in meat-free goods. When considered against the goods for which it is registered, at least those which I have found identical to the applicant's goods for the purpose of the present proceedings, I find the mark's inherent distinctiveness to be of a low degree. In the opponent's figurative mark, the conceptual impact remains the same, if not highly similar. Whilst the figurative embellishments may add to the mark's distinctiveness, I nonetheless consider it to be of a low degree.

Likelihood of confusion

32. In determining whether there is a likelihood of confusion, a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and vice versa. As I mentioned above, it is also necessary for me to keep in mind the distinctive character of the opponent's trade mark, as the more distinctive it is, the greater the likelihood of confusion.

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

34. I take note of the comments made by Mr Iain Purvis Q.C., as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, where he explained that:

“16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: “The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark.””

35. To make the assessment, I must adopt the global approach advocated by the case law whilst taking account of my earlier conclusions. I also bear in mind that the average consumer rarely has the chance to make direct comparisons between trade marks and, instead, must rely upon the imperfect picture of them retained in its mind.

36. I will begin by considering a likelihood of direct confusion. I have found the marks visually similar to a low or low to medium degree, aurally similar to a fairly low degree and conceptually highly similar. I have further found that the respective goods are identical and that the average consumer is likely to apply between a low and medium degree of attention to their purchase. There is a duplication in the word ‘NO’ in the application which is somewhat unusual and is therefore unlikely to be overlooked by the average consumer, even one applying only a low degree of attention. The consumer will also likely acknowledge that the applied for mark comprises three words amalgamated to create a single word, whereas in the earlier marks the words are distinct, and there are more of them. In the opponent’s figurative mark, there are several more components enabling the consumer to visually distinguish between the marks. Though I keep in mind the interdependency principle, insofar as I accept that a lesser degree of similarity between the marks can be offset by a high similarity, or in

this case identity, between the respective goods, in light of my findings regarding the distinctiveness of the earlier marks and the above considerations, I conclude that the simultaneous use of both parties' marks would not give rise to a likelihood of direct confusion.

37. I turn my attention now to indirect confusion. Having concluded that the consumer will be able to differentiate between the marks and identify that they are different, I must now consider whether the consumer will attribute those differences to distinct origins, or simply a single origin offering various sub-brands, for example. To my mind, the former is the most likely. It is the distinctiveness of the common element which is key to my assessment. The marks' common element, specifically 'NO MEAT', in the context of the goods for which each mark is, or intends to be, registered, will likely be regarded as mere coincidence; it is not an unsurprising combination of words when considered against the conflicting goods. If not directly descriptive the term 'NO MEAT' certainly plays an allusive role and will therefore not necessarily be assumed indicative of a relationship. Instead, when considering each of the respective marks as a whole, I find the consumer will correctly identify that the marks originate from unrelated entities and will not presume them to be associated.

Conclusion

38. The opposition has failed and, subject to any successful appeal, the application will proceed to registration.

Costs

39. The applicant has succeeded and is entitled to a contribution towards its costs. Awards of costs are governed by Annex A of Tribunal Practice Notice ("TPN") 2/2016. In accordance with that TPN, I award costs as follows:

Considering the statement of grounds and preparing a counterstatement:	£200
Preparing written submissions:	£300

Total:

£500

40. I order The Livekindly Company Switzerland GmbH to pay Goh Joo Hin Pte Ltd the sum of £500. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 11th day of July 2022

Laura Stephens

For the Registrar