

O/782/22

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00003572130
BY INTERCONTINENTAL FOODS (UK) LTD T/A DONYA FOODS
TO REGISTER THE TRADE MARK:



IN CLASS 29

AND

IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 426283
BY NIK ROSE CHENARAN CO.

BACKGROUND AND PLEADINGS

1. On 24 December 2020, Intercontinental Foods (UK) LTD T/A Donya Foods Limited (“the applicant”) applied to register the trade mark shown on the cover page of this decision in the UK. The application was published for opposition purposes on 21 May 2021. The applicant seeks registration for the following goods:

Class 29 Yoghurt drinks.

2. The application was opposed by Nik Rose Chenaran Co. (“the opponent”) on 20 August 2021. The opposition is based upon section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opponent relies upon the following trade mark:



IR(EU) registration no. 1371938

Filing date 2 May 2017; registration date 28 March 2018.

Relying upon all of the goods and services for which the earlier mark is registered, namely:

Class 32 Non-alcoholic fruit juice beverages; fruit juice and fruit beverages; aerated fruit juice; concentrated fruit juice; carbonated fruit juice.

Class 35 Advertising services; export agency services; wholesale and retail sale services for goods including non-alcoholic fruit juice beverages, fruit juice and fruit beverages, aerated fruit juice, concentrated fruit juice, carbonated fruit juice.

Class 39 Packing of goods and delivery of goods including non-alcoholic fruit juice beverages, fruit juice and fruit beverages, aerated fruit juice, concentrated fruit juice, carbonated fruit juice.

3. The opponent claims that there is a likelihood of confusion as a result of the identity and high similarity of the goods and the high similarity of the marks.

4. The applicant filed a counterstatement denying the claims made.

5. The opponent is represented by Briffa and the applicant is unrepresented.¹ Neither party requested a hearing, but the opponent filed submissions in lieu. This decision is taken following a careful perusal of the papers.

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 Act relied on in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case-law of EU courts.

DECISION

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

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

(a)...

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

¹ The applicant was previously represented in the proceedings by Perry Clement Solicitors, who notified the Tribunal on 1 June 2022, that they were advised that they were no longer instructed in the matter.

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

8. An earlier trade mark is defined in section 6 of the Act, the relevant parts of which state:

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

(a) a registered trade mark, international trade mark (UK) or Community trade mark or international trade mark (EC) which has a date of IR 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.”

9. The trade mark upon which the opponent relies qualifies as an earlier trade mark because it was applied for at an earlier date than the applicant’s mark pursuant to section 6 of the Act. As the opponent’s mark had not completed its registration process more than 5 years before the filing date of the mark in issue, it is not subject to proof of use pursuant to section 6A of the Act. The opponent is entitled to rely upon all of the goods and services for which the mark is registered.

Section 5(2)(b) case law

10. The following principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia*

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

- (a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;
- (b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;
- (c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;
- (d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;
- (e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;
- (f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;
- (g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;

- (h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;
- (i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;
- (j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;
- (k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of goods and services

22. The competing goods and services are as follows:

Opponent's goods and services	Applicant's goods
<p><u>Class 32</u> Non-alcoholic fruit juice beverages; fruit juice and fruit beverages; aerated fruit juice; concentrated fruit juice; carbonated fruit juice.</p> <p><u>Class 35</u> Advertising services; export agency services; wholesale and retail sale services for goods including non-alcoholic fruit juice beverages, fruit juice and fruit beverages, aerated fruit juice, concentrated fruit juice, carbonated fruit juice.</p>	<p><u>Class 29</u> Yoghurt drinks.</p>

Class 39

Packing of goods and delivery of goods including non- alcoholic fruit juice beverages, fruit juice and fruit beverages, aerated fruit juice, concentrated fruit juice, carbonated fruit juice.

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

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

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

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;
- (d) The respective trade channels through which the goods or services reach the market;

- (e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be found in supermarkets and, in particular, whether they are or are likely to be found on the same or different shelves;
- (f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance, whether market research companies, who of course act for industry, put the goods or services in the same or different sectors

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

“29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut 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.”

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

“... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless the principle should not be taken too far. Treat was decided the way it was because the ordinary and natural, or core, meaning of ‘dessert sauce’ did not include jam, or because the ordinary and natural description of jam was not ‘a dessert sauce’. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question.”

16. In *Beautimatic International Ltd v Mitchell International Pharmaceuticals Ltd and Another*, [2000] F.S.R. 267 (HC), Neuberger J. (as he then was) stated that:

“I should add that I see no reason to give the word “cosmetics” and “toilet preparations”... anything other than their natural meaning, subject, of course, to the normal and necessary principle that the words must be construed by reference to their context.”

17. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06, the GC stated that “complementary” means:

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

18. In *Sanco SA v OHIM*, Case T-249/11, the GC indicated that goods and services may be regarded as ‘complementary’ and therefore similar to a degree in circumstances where the nature and purpose of the respective goods and services are very different, i.e. chicken against transport services for chickens. The purpose of examining whether there is a complementary relationship between goods/services is to assess whether the relevant public are liable to believe that responsibility for the goods/services lies with the same undertaking or with economically connected undertakings. As Mr Daniel Alexander Q.C. noted, as the Appointed Person, in *Sandra Amalia Mary Elliot v LRC Holdings Limited*, BL-0-255-13:

“It may well be the case that wine glasses are almost always used with wine – and are, on any normal view, complementary in that sense – but it does not follow that wine and glassware are similar goods for trade mark purposes.”
Whilst on the other hand: “... it is neither necessary nor sufficient for a finding

of similarity that the goods in question must be used together or that they are sold together.”

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“... it is neither necessary nor sufficient for a finding of similarity that the goods in question must be used together or that they are sold together.”

Yoghurt drinks

19. I consider that the applicant’s above goods share the most similarity with “non-alcoholic fruit juice beverages” and “fruit juice and fruit beverages” in the opponent’s specification. Albeit the goods will not overlap in nature, because the applicant’s goods are dairy based, whereas the opponent’s goods are fruit based, I consider that the goods overlap in purpose, method of use and user because they are all non-alcoholic beverages which will be consumed by members of the general public straight from the plastic bottle that the goods would be served in. I also consider that the goods would overlap in distribution channels because they would be sold in supermarkets, and in either the same cold drinks aisle or in close proximity. I do not consider that the goods are complementary, however, I consider that they are in competition because the user may choose to purchase either the applicant’s or the opponent’s goods in order to quench their thirst. Consequently, I consider that the goods are similar to between a medium and high degree.

The average consumer and the nature of the purchasing act

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

21. The average consumer for the goods will be members of the general public. I note that the applicant submits that “given the nature of the goods, which are generally low value, frequently purchased items, they [the average consumer] will pay no particular degree of care or attention to the purchasing act”. I agree that the cost of the goods, on balance, it is likely to be relatively low, and that the majority of the goods will be purchased relatively frequently, most likely as part of a weekly food shop or even a part of a meal deal. However, I note that the average consumer will take various factors into consideration such as the cost, taste and the ingredients, especially to reflect their dietary requirements, or any allergens to avoid. Therefore, I consider the level of attention paid during the purchasing process will be between a low and medium degree.

22. The goods are likely to be obtained by self-selection from shelves of a supermarket, retail outlet or online equivalents. Visual considerations are therefore likely to dominate the selection process. I also do not discount that there may be an aural component to the purchase if the goods were to be ordered at a bar or in a café. However, visual considerations would still be likely to dominate as the goods would be displayed behind the bar in fridges, or on a menu.²

Comparison of the trade marks

23. 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

² *Simonds Farsons Cisk plc v OHIM*, Case T-3/04

conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components. The CJEU stated, at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

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

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

25. The respective trade marks are shown below:

Opponent's trade mark	Applicant's trade mark
	

26. The opponent's trade mark consists of two sets of text presented in a green stylised font, with a white border outlining it. I consider that the first text will be recognised by the average consumer as written in a foreign language, although the specific language is unlikely to be identified. The text below will be recognised as the invented word 'Alis', which does not convey any particular meaning. I consider that as the invented word 'Alis' consists of identifiable letters from the English language, and therefore can be aurally pronounced by the average consumer, it is the distinctive and dominant part of the mark. Therefore, it will likely play a greater role in the overall impression, with the foreign language text and stylisation playing a lesser role.

27. The applicant describes its mark as a "figurative bottle bearing distinctly coloured and patterned label and a word comprised of Arabic letters in the lower right hand corner". I also note that the label, which is comprised of the colours yellow and green, also contains two sets of text, one above another, presented on a black square. The first set of text is 'ALIS' which is an invented word with no identifiable meaning. I also consider that the second set of text, and the text in the lower right hand corner, will also be recognised by the average consumer as written in a foreign language, although the specific language is unlikely to be identified. At the beginning of the text, the average consumer may also recognise a device of a person running towards the left. Furthermore, I consider that the bottle device and the decorative aspects of the label, which looks like white splashes across a green background, isn't particularly striking or unusual. I consider that as the 'ALIS' text consists of identifiable letters from the English language, and therefore can be aurally pronounced by the average consumer, it will likely play a greater role in the overall impression with the foreign language text and the bottle device playing a lesser role. Furthermore, I also note that where a mark consists of both words and figurative elements, the word element must generally be regarded as more distinctive than the figurative element, since the relevant public will keep in mind the word element to identify the mark concerned, with the figurative element being perceived as decorative.³ Consequently, I also consider that the 'ALIS' text in the applicant's mark is the dominant and distinctive part of the mark.

³ *Migros-Genossenschafts-Bund v EUIPO* (T-68/17) (CReMESPRESSO) paragraph 52

28. Visually, the marks coincide in the presence of two sets of text, one comprised of English letters, and one comprised of a foreign language. Furthermore, the English text in both marks share the letters A, L, I and S. I also note that the foreign language text in both marks are presented almost identically. These are all points of visual similarity. However, I note that the letters are all in white capitals in the applicant's mark and only the letter A is capitalized in the opponent's mark, with the remaining letters in lower case, all presented in the colour green. I also note that the texts are presented in different orders, with the foreign text on top and the Alis text on the bottom of the opponent's mark, and the ALIS text on top and the foreign text on the bottom of the applicant's mark. Lastly, I note that the applicant's mark contains the bottle device, with the black, green and yellow label, as well as the text in the lower right hand corner and the running person device. These act as visual points of difference. Therefore, taking the above into account, I consider that the marks are visually similar to between a low and medium degree.

29. Aurally, I consider that the UK average consumer will not pronounce any of the foreign language text in both marks. Neither do I consider that the device mark will be articulated in the applicant's mark. Therefore, I consider that both the opponent's and applicant's mark will be pronounced as AL-IS. The marks are aurally identical.

30. Conceptually, I note that both the applicant and opponent submit that the foreign language text in both marks is in Farsi. However, as noted above, the foreign language text will not be attributed any identifiable meaning by the average consumer and will not, therefore, contribute to the conceptual meaning conveyed by the mark. The marks both share the ALIS/Alis text. I consider that this is an invented word with no conceptual meaning. I accept that the bottle device element in the applicant's mark conveys the idea of a bottle drink, which has no counterpart in the opponent's mark. Therefore, the marks are conceptually dissimilar.

Distinctive character of the earlier trade mark

31. 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 C108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-2779, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promotion of 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).”

32. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use that has been made of it.

33. As the opponent has not filed any evidence to show that its mark has been enhanced through use, I only have the inherent position to consider.

34. As noted above, I consider that the text ‘Alis’ would be recognised as an invented word which is neither allusive nor descriptive of the opponent’s goods. The ‘Alis’ wording is presented below as what will be recognised by the average consumer as text written in a foreign language, although the specific language is unlikely to be identified.

Consequently, I consider that the opponent's mark is inherently distinctive to a high degree.

Likelihood of confusion

35. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and vice versa. It is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the goods and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

36. The following factors must be considered to determine if a likelihood of confusion can be established:

- I have found the word ALIS/Alis to be the dominant and distinctive part of both marks, and therefore plays a greater role in the overall impression.
- I have found the marks to be visually similar to between a low and medium degree.
- I have found the marks to be aurally identical.
- I have found the marks to be conceptually dissimilar.
- I have found the opponent's mark to be inherently distinctive to a high degree.
- I have identified the average consumer as members of the general public, who will select the goods primarily by visual means, although I do not discount an aural component.

- I have concluded that between a low and medium degree of attention will be paid during the purchasing process for the goods.
- I have found the parties' goods to be similar to between a medium and high degree.

37. Taking all of the above into account and bearing in mind the principle of imperfect recollection, I am satisfied that the marks are unlikely to be mistakenly recalled or misremembered as each other. I do not consider that the average consumer would overlook the bottle device element within the applicant's trade mark, especially due to its size within the figurative mark. Consequently, I do not consider that there would be a likelihood of direct confusion.

38. It now falls to me to consider the likelihood of indirect confusion. Indirect confusion was described in the following terms by Iain Purvis Q.C., sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10:

"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."

39. I also bear in mind the comments of Mr Iain Purvis Q.C., sitting as the Appointed Person, in *Kurt Geiger v A-List Corporate Limited*, BL O-075-13. He said:

“38. The Hearing Officer cited *Sabel v Puma* at paragraph 50 of her decision for the proposition that ‘the more distinctive it is, either by inherent nature or by use, the greater the likelihood of confusion’. This is indeed what was said in *Sabel*. However, it is a far from complete statement which can lead to error if applied simplistically.

39. It is always important to bear in mind what it is about the earlier mark which gives it distinctive character. In particular, if distinctiveness is provided by an aspect of the mark which has no counterpart in the mark alleged to be confusingly similar, then the distinctiveness will not increase the likelihood of confusion at all. If anything it will reduce it.”

40. I also take into account the decision *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch) in which the court confirmed that if the only similarity between the respective marks is a common element which has low distinctiveness, that points against there being a likelihood of confusion.

41. Therefore, taking all of the above case law into account, I consider that it is important to ask, ‘in what does the distinctive character of the earlier mark lie?’ Only after that has been done can a proper assessment of the likelihood of confusion be carried out.

42. Both marks share the distinctive and dominant element, ALIS/Alis, which would be viewed as an invented word with no conceptual meaning. Therefore, taking the above case law into account, I consider that the common use of the word ALIS will lead the average consumer to conclude that the marks originate from the same or economically linked undertakings. I consider that the average consumer will see the addition of the bottle device, the different stylisations and the different presentation of the wording (foreign text then Alis vs ALIS then foreign text) in the applicant’s mark and perceive it, in the context of the applied-for yoghurt drink goods, as an alternative decorative mark being used by the same undertaking (perhaps being an updated version of the same mark). Taking all of the above into account, I consider there to be a likelihood of indirect confusion.

CONCLUSION

43. The opposition is successful in its entirety and the application is refused.

COSTS

44. The opponent has been successful and is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 2/2016. In the circumstances, I award the opponent the sum of **£650** as a contribution towards the costs of the proceedings. The sum is calculated as follows:

Filing a Notice of opposition and considering the applicant's counterstatement	£200
Filing written submissions	£350
Official Fee	£100
Total	£650

45. I therefore order Intercontinental Foods (UK) LTD T/A Donya Foods Limited to pay Nik Rose Chenaran Co. the sum of £650. This sum is to be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 9th day of September 2022

L FAYTER

For the Registrar