

O/0082/23

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00003668606

BY

ENRICO ALEXANDER FERNANDO FEULNER

AND

FEDERICO MAXIMILIAN SEBASTIAN FEULNER

TO REGISTER THE TRADE MARK:



IN CLASSES

1, 3, 5, 11, 21 25,

29, 30, 31, 32, 35, 40, 42 AND 43

AND

OPPOSITION THERETO UNDER NO. 600002109

BY

ORKLA FOODS CESKO A SLOVENSKO A.S.

## Background and pleadings

1. On 14 July 2021, ENRICO ALEXANDER FERNANDO FEULNER and FEDERICO MAXIMILIAN SEBASTIAN FEULNER (“the applicants”) applied to register the trade mark shown below. The application was first published on 5 November 2021, with an amendment being published on 7 January 2022. The applied for mark has a priority date of 23 April 2019.



2. The applicant’s full specification is set out at Annex 1.
3. Orkla Foods Česko a Slovensko a.s. (“the opponent”) opposes the trade mark on the basis of section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opposition is reliant upon two marks.
4. Trade mark WO0000000419249 (“the first earlier mark”), which has a date of protection of the international registration in the UK of 11 May 2017. It has an international registration date of 5 December 1975, a designation date of 7 December 2015, and a priority date of 25 July 1975.

**VITANA**

5. The mark is registered for the following goods, upon which the opponent relies:

Class 29     Ready-made soups and sauces.

Class 30 Powdered flour products, especially "knedlíky" (dumplings), small pancakes, gougelhopf, gingerbread, potato pancakes, cake batter, chocolate cake; foodstuffs for use as coffee substitutes; spiced mixtures; semi-cooked instant pastry products.

6. The opposition on the basis of the first earlier mark is directed against the following of the applicants' goods and services:

Class 29 Albumen for culinary purposes; seaweed extracts for food; edible fats; peanut butter; coconut butter; fruit, preserved; sauerkraut; coconut, desiccated; rape oil for food; jams; frozen fruits; raisins; vegetables, preserved; vegetables, cooked; vegetables, dried; oils for food; dates; fruit, stewed; fruit jellies; fruit pulp; ginger jam; soya beans, preserved, for food; maize oil for food; palm kernel oil for food; sesame oil for food; marmalade; palm oil for food; nuts, prepared; onions, preserved; olives, preserved; jellies for food; gelatine; olive oil for food; vegetable salads; fruit salads; sunflower oil for food; truffles, preserved; fruit peel; alginates for culinary purposes; almonds, ground; peanuts, prepared; mushrooms, preserved; coconut fat; coconut oil for food; fruit chips; fruit preserved in alcohol; pollen prepared as foodstuff; tofu; fruits, tinned; apple purée; cranberry compote; fruit-based snack food; milk shakes; sunflower seeds, prepared; vegetable mousses; seeds, prepared; aloe vera prepared for human consumption; artichokes, preserved; arrangements of processed fruit; flavoured nuts; hazelnuts, prepared; berries, preserved; lemon juice for culinary purposes; oat milk; vegetable-based cream; edible insects, not live; sweet corn, processed; nut-based spreads; dried mangoes; dried durians; dried strawberries; fruit leathers; snack mixes consisting of dehydrated fruit and processed nuts; tofu-based snacks; fruit juices for cooking; preserved plums; organic

coconut oil for culinary purposes; cut fruits; glazed fruits; fruit paste; fruit jams; blanched nuts; fruit purées; dried fruit mixes; nut toppings; bottled sliced fruits; mincemeat made from fruits; nut-based snack foods; fruit-based fillings for cakes and pies; vegetable chips; vegetable-based snack foods; uncooked hamburger patties.

Class 30 Seaweed [condiment]; almond paste; star aniseed; infusions, not medicinal; coffee flavourings; unleavened bread; rusks; biscuits; malt biscuits; peppermint sweets; sweets; waffles; buns; cocoa; coffee; unroasted coffee; vegetal preparations for use as coffee substitutes; capers; caramels [sweets]; cinnamon [spice]; curry [spice]; cereal preparations; chewing gum; chicory [coffee substitute]; tea; chocolate; marzipan; cloves [spice]; confectionery; corn flakes; popcorn; ice cream; pancakes; cooking salt; salt for preserving foodstuffs; turmeric; ginger [spice]; natural sweeteners; spices; flour; bean meal; corn flour; mustard meal; barley meal; soya flour; wheat flour; fondants [confectionery]; sugar; binding agents for ice cream; ice for refreshment; groats for human food; vinegar; dulce de leche; corn, milled; corn, roasted; bread; golden syrup; honey; husked barley; nutmegs; pies; crushed barley; sandwiches; petit-beurre biscuits; bread rolls; hominy; pralines; liquorice [confectionery]; saffron [seasoning]; celery salt; sorbets [ices]; tapioca flour; edible ices; powders for making ice cream; almond confectionery; peanut confectionery; crushed oats; husked oats; oat-based food; oat flakes; oatmeal; stick liquorice [confectionery]; beer vinegar; coffee-based beverages; cocoa-based beverages; chocolate-based beverages; artificial coffee; chips [cereal products]; malt for human consumption; propolis; royal jelly; crackers; fruit jellies [confectionery]; fruit coulis [sauces]; muesli; tea-based beverages; breadcrumbs; cereal-based snack food; rice-based snack food; high-protein cereal bars; cereal bars; palm sugar; dough; flowers or leaves for use

as tea substitutes; dessert mousses [confectionery]; chocolate-coated nuts; nut flours; agave syrup [natural sweetener]; chamomile-based beverages; processed seeds for use as a seasoning; ice cream gateaux; ice cream bars; ice cream desserts; ice cream sandwiches; fruit ice cream; confectionery ices; ice cream mixes; ice cream cones; aromatic preparations for ice-creams; organic binding agents for ice cream; non-dairy ice cream; sherbet [confectionery]; cilantro, dried; mint, dried; basil, dried; dried coriander seeds for use as seasoning; dried coriander for use as seasoning; roasted brown rice tea; corn-based snack food; muesli bars; confectionery bars; edible fruit ices; fruit drops [confectionery]; tea-based beverages with fruit flavoring; vegetable pies; cocoa extracts for human consumption; frozen pies; frozen pastries; gluten-free bread; tiramisu; tea extracts; coffee extracts; ground ginger.

Class 43 Food and drink catering; restaurant services; self-service restaurant services; bar services; café services; food sculpting; cafeteria services; hotel services; wine bar services; self-service cafeteria services; mobile restaurant services; business catering services; take-out restaurant services; food preparation services; catering services for schools; fast-food restaurant services; bar and restaurant services; catering services for company cafeterias; catering services for hospitality suites; take-away food and drink services; consultancy services relating to food preparation; providing food and drink catering services for exhibition facilities; providing food and drink catering services for convention facilities; providing food to needy persons [charitable services].

7. Trade mark WO0000000743662 (“the second earlier mark”), which has a date of protection of the international registration in the UK of 29 June 2017. It has an international registration date of 18 May 2000 and a designation date of 29 October 2015.



8. The mark is registered for the following goods, upon which the opponent relies:

Class 1 Ammonium bicarbonates and sodium salts thereof.

Class 29 Soups, broths and meat broths of all kinds.

Class 30 Oat porridge as food, precooked rice, coffee-based products, rice-based puffed cereals, roux, sauces (condiments).

Class 32 Powders for making beverages, powders for making sparkling beverages.

9. The opposition on the basis of the second earlier mark is directed against the applicants' Class 29, Class 30, and Class 43 goods and services, as detailed at paragraph 6, as well as its:

Class 1 Salt, raw.

Class 32 Non-alcoholic fruit extracts; beer; ginger beer; malt beer; beer wort; non-alcoholic preparations for making beverages; fruit juices; syrups for beverages; waters [beverages]; lithia water; mineral water [beverages]; preparations for making carbonated water; table waters; must; lemonades; extracts of hops for making beer; vegetable juices [beverages]; syrups for lemonade; malt wort; grape must, unfermented; orgeat; soda water; sherbets [beverages]; tomato juice [beverage]; pastilles for effervescing beverages; powders for effervescing beverages;

carbonated water; sarsaparilla [non-alcoholic beverage]; aperitifs, non-alcoholic; cocktails, non-alcoholic; fruit nectars, non-alcoholic; isotonic beverages; cider, non-alcoholic; smoothies; soya-based beverages, other than milk substitutes; protein-enriched sports beverages; rice-based beverages, other than milk substitutes; non-alcoholic beverages flavoured with coffee; non-alcoholic beverages flavoured with tea; soft drinks; vitamin enriched sparkling water [beverages]; flavored mineral water; carbonated mineral water; mineral enriched water [beverages]; non-alcoholic cordials; aloe vera juices; concentrated fruit juices; aerated fruit juices; non-alcoholic beverages containing fruit juices; non-alcoholic beverages containing vegetable juices; fruit beverages and fruit juices; beverages consisting of a blend of fruit and vegetable juices; non-alcoholic punch; colas [soft drinks]; non-carbonated soft drinks; non-alcoholic malt beverages; non-alcoholic flavored carbonated beverages; fruit-flavored soft drinks; concentrates used in the preparation of soft drinks; fruit-based soft drinks flavored with tea; fruit beverages; fruit-flavored beverages; fruit-based beverages; syrups for making fruit-flavored drinks; vegetable-based beverages; nutritionally fortified water; nutritionally fortified beverages; frozen carbonated beverages; root beer; energy drinks; energy drinks containing caffeine.

10. The opponent opposed the application using the “fast track” procedure by filing a Form TM7F. This procedure can be used when the grounds of opposition are limited to sections 5(1) and/or 5(2) of the Act.

11. In its Form TM7F and statement of grounds, the opponent says that the competing marks differ by one letter and that the respective goods and services are identical or similar, such that there will be a likelihood of confusion on the market.

12. The applicants filed a Form TM8 denying the opponent’s claims.

13. Rule 6 of the Trade Marks (Fast Track Opposition) (Amendment) Rules 2013, S.I. 2013 2235, disapplies paragraphs 1-3 of Rule 20 of the Trade Mark Rules 2008, but it provides that Rule 20(4) shall continue to apply. Rule 20(4) states that:

“(4) The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit.”

14. The net effect of these changes is to require parties to seek leave in order to file evidence in fast track oppositions. Rule 62(5) (as amended) states that arguments in fast track proceedings shall be heard orally only if (i) the Office requests it, or (ii) either party to the proceedings requests it and the registrar considers that oral proceedings are necessary to deal with the case justly and at proportionate cost; otherwise, written arguments will be taken.

15. In this case, neither party sought leave to file evidence.

16. A hearing was neither requested nor was it considered necessary.

17. Neither party elected to file written submissions.

18. The applicants are represented by Forresters IP LLP and the opponent is represented by Insignia IP Services Ltd.

## **DECISION**

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

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

(a) ...

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



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

20. 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) a European Union 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.”

21. Given their priority dates, the trade marks upon which the opponent relies qualify as earlier trade marks as defined in section 6(1) of the Act. The applicants have not requested proof of use pursuant to section 6A of the Act.

### **Section 5(2)(b) – case law**

22. 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 this decision continues to make reference to the trade mark case-law of EU courts.

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

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

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

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

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

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

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

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

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

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

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

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

### **Comparison of the goods and services**

24. When making the comparison, all relevant factors relating to the goods in the specifications should be taken into account. In the judgment of the CJEU *Canon Case C-39/97*, the court stated at paragraph 23 of its judgment 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.”

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

(a) The respective uses of the respective goods or services;

(b) The respective users of the respective goods or services;

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

26. 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.”

27. In *Sky v Skykick* [2020] EWHC 990 (Ch), Lord Justice Arnold considered the validity of trade marks registered for, amongst many other things, the general term ‘computer software’. In the course of his judgment he set out the

following summary of the correct approach to interpreting broad and/or vague terms:

“...the applicable principles of interpretation are as follows:

(1) General terms are to be interpreted as covering the goods or services clearly covered by the literal meaning of the terms, and not other goods or services.

(2) In the case of services, the terms used should not be interpreted widely, but confined to the core of the possible meanings attributable to the terms.

(3) An unclear or imprecise term should be narrowly interpreted as extending only to such goods or services as it clearly covers.

(4) A term which cannot be interpreted is to be disregarded.”

28. In *Gérard Meric v Office for Harmonisation in the Internal Market (“OHIM”)*, 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.”

29. 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 OHIM* (Trade Marks and Designs), 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.”

30. 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 Amelia 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.”

While 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.”

31. The goods and services in question are as follows:

| <b>Opponent’s goods</b>                         | <b>Applicants’ goods</b>                            |
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| <u>First earlier mark</u>                       | <u>Class 1 (opposed by the second earlier mark)</u> |
| <u>Class 29</u><br>Ready-made soups and sauces. | Salt, raw   |
| <u>Class 30</u>                                 | <u>Class 29 (opposed by both earlier marks)</u>     |

Powdered flour products, especially "knedlíky" (dumplings), small pancakes, gougelhopf, gingerbread, potato pancakes, cake batter, chocolate cake; foodstuffs for use as coffee substitutes; spiced mixtures; semi-cooked instant pastry products.

Second earlier mark

Class 1

Ammonium bicarbonates and sodium salts thereof.

Class 29

Soups, broths and meat broths of all kinds.

Class 30

Oat porridge as food, precooked rice, coffee-based products, rice-based puffed cereals, roux, sauces (condiments).

Class 32

Powders for making beverages, powders for making sparkling beverages.

Albumen for culinary purposes; seaweed extracts for food; edible fats; peanut butter; coconut butter; fruit, preserved; sauerkraut; coconut, desiccated; rape oil for food; jams; frozen fruits; raisins; vegetables, preserved; vegetables, cooked; vegetables, dried; oils for food; dates; fruit, stewed; fruit jellies; fruit pulp; ginger jam; soya beans, preserved, for food; maize oil for food; palm kernel oil for food; sesame oil for food; marmalade; palm oil for food; nuts, prepared; onions, preserved; olives, preserved; jellies for food; gelatine; olive oil for food; vegetable salads; fruit salads; sunflower oil for food; truffles, preserved; fruit peel; alginates for culinary purposes; almonds, ground; peanuts, prepared; mushrooms, preserved; coconut fat; coconut oil for food; fruit chips; fruit preserved in alcohol; pollen prepared as foodstuff; tofu; fruits, tinned; apple purée; cranberry compote; fruit-based snack food; milk shakes; sunflower seeds, prepared; vegetable mousses; seeds, prepared; aloe vera prepared for human consumption; artichokes, preserved; arrangements of processed fruit; flavoured nuts; hazelnuts, prepared; berries, preserved; lemon juice for culinary purposes; oat milk; vegetable-based cream; edible insects, not live; sweet corn, processed; nut-based

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|  | <p>spreads; dried mangoes; dried durians; dried strawberries; fruit leathers; snack mixes consisting of dehydrated fruit and processed nuts; tofu-based snacks; fruit juices for cooking; preserved plums; organic coconut oil for culinary purposes; cut fruits; glazed fruits; fruit paste; fruit jams; blanched nuts; fruit purées; dried fruit mixes; nut toppings; bottled sliced fruits; mincemeat made from fruits; nut-based snack foods; fruit-based fillings for cakes and pies; vegetable chips; vegetable-based snack foods; uncooked hamburger patties.</p> <p><u>Class 30 (opposed by both earlier marks)</u></p> <p>Seaweed [condiment]; almond paste; star aniseed; infusions, not medicinal; coffee flavourings; unleavened bread; rusks; biscuits; malt biscuits; peppermint sweets; sweets; waffles; buns; cocoa; coffee; unroasted coffee; vegetal preparations for use as coffee substitutes; capers; caramels [sweets]; cinnamon [spice]; curry [spice]; cereal preparations; chewing gum; chicory [coffee substitute]; tea; chocolate; marzipan; cloves [spice]; confectionery; corn flakes; popcorn; ice cream; pancakes; cooking salt; salt for preserving foodstuffs; turmeric; ginger [spice]; natural sweeteners; spices; flour; bean meal; corn flour; mustard meal; barley meal; soya flour; wheat flour;</p> |
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|  | <p> fondants [confectionery]; sugar; binding agents for ice cream; ice for refreshment; groats for human food; vinegar; dulce de leche; corn, milled; corn, roasted; bread; golden syrup; honey; husked barley; nutmegs; pies; crushed barley; sandwiches; petit-beurre biscuits; bread rolls; hominy; pralines; liquorice [confectionery]; saffron [seasoning]; celery salt; sorbets [ices]; tapioca flour; edible ices; powders for making ice cream; almond confectionery; peanut confectionery; crushed oats; husked oats; oat-based food; oat flakes; oatmeal; stick liquorice [confectionery]; beer vinegar; coffee-based beverages; cocoa-based beverages; chocolate-based beverages; artificial coffee; chips [cereal products]; malt for human consumption; propolis; royal jelly; crackers; fruit jellies [confectionery]; fruit coulis [sauces]; muesli; tea-based beverages; breadcrumbs; cereal-based snack food; rice-based snack food; high-protein cereal bars; cereal bars; palm sugar; dough; flowers or leaves for use as tea substitutes; dessert mousses [confectionery]; chocolate-coated nuts; nut flours; agave syrup [natural sweetener]; chamomile-based beverages; processed seeds for use as a seasoning; ice cream gateaux; ice cream bars; ice cream desserts; ice cream </p> |
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|  | <p>sandwiches; fruit ice cream; confectionery ices; ice cream mixes; ice cream cones; aromatic preparations for ice-creams; organic binding agents for ice cream; non-dairy ice cream; sherbet [confectionery]; cilantro, dried; mint, dried; basil, dried; dried coriander seeds for use as seasoning; dried coriander for use as seasoning; roasted brown rice tea; corn-based snack food; muesli bars; confectionery bars; edible fruit ices; fruit drops [confectionery]; tea-based beverages with fruit flavoring; vegetable pies; cocoa extracts for human consumption; frozen pies; frozen pastries; gluten-free bread; tiramisu; tea extracts; coffee extracts; ground ginger.</p> <p><u>Class 32 (opposed by the second earlier mark)</u></p> <p>Non-alcoholic fruit extracts; beer; ginger beer; malt beer; beer wort; non-alcoholic preparations for making beverages; fruit juices; syrups for beverages; waters [beverages]; lithia water; mineral water [beverages]; preparations for making carbonated water; table waters; must; lemonades; extracts of hops for making beer; vegetable juices [beverages]; syrups for lemonade; malt wort; grape must, unfermented; orgeat; soda water; sherbets [beverages]; tomato juice [beverage]; pastilles for effervescing beverages; powders for effervescing</p> |
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|  | beverages; carbonated water; sarsaparilla [non-alcoholic beverage]; aperitifs, non-alcoholic; cocktails, non-alcoholic; fruit nectars, non-alcoholic; isotonic beverages; cider, non-alcoholic; smoothies; soya-based beverages, other than milk substitutes; protein-enriched sports beverages; rice-based beverages, other than milk substitutes; non-alcoholic beverages flavoured with coffee; non-alcoholic beverages flavoured with tea; soft drinks; vitamin enriched sparkling water [beverages]; flavored mineral water; carbonated mineral water; mineral enriched water [beverages]; non-alcoholic cordials; aloe vera juices; concentrated fruit juices; aerated fruit juices; non-alcoholic beverages containing fruit juices; non-alcoholic beverages containing vegetable juices; fruit beverages and fruit juices; beverages consisting of a blend of fruit and vegetable juices; non-alcoholic punch; colas [soft drinks]; non-carbonated soft drinks; non-alcoholic malt beverages; non-alcoholic flavored carbonated beverages; fruit-flavored soft drinks; concentrates used in the preparation of soft drinks; fruit-based soft drinks flavored with tea; fruit beverages; fruit-flavored beverages; fruit-based beverages; syrups for making fruit-flavored drinks; vegetable-based |
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|  | <p>beverages; nutritionally fortified water; nutritionally fortified beverages; frozen carbonated beverages; root beer; energy drinks; energy drinks containing caffeine.</p> <p><u>Class 43 (opposed by both earlier marks)</u></p> <p>Food and drink catering; restaurant services; self-service restaurant services; bar services; café services; food sculpting; cafeteria services; hotel services; wine bar services; self-service cafeteria services; mobile restaurant services; business catering services; take-out restaurant services; food preparation services; catering services for schools; fast-food restaurant services; bar and restaurant services; catering services for company cafeterias; catering services for hospitality suites; take-away food and drink services; consultancy services relating to food preparation; providing food and drink catering services for exhibition facilities; providing food and drink catering services for convention facilities; providing food to needy persons [charitable services].</p> |
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32. I take account of the established case law that goods are not complementary on the grounds that one is used in the manufacture of another good: "...raw materials subject to a transformation process are essentially different from the finished products which incorporate, or are covered by, those raw materials...".<sup>1</sup>

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<sup>1</sup> T-288/12 El du Pont de Nemours and Company v OHIM

## Class 1

33. I compare the applicants' "salt, raw" with the opponent's "ammonium bicarbonates and sodium salts thereof". Given that raw salt is in Class 1 in the Nice Classification, I take this to be unrefined salt for industrial purposes and I note that Class 1 "does not include, in particular: ... salt for preserving foodstuffs (Cl. 30)".
34. "Ammonium bicarbonate" is defined (albeit it is an American English definition) by the Collins online dictionary as: "*Chemistry* a white, crystalline, water-soluble solid,  $\text{NH}_4\text{HCO}_3$ , used chiefly in the manufacture of baking powder." Both sets of goods would be used by big organisations as opposed to individual members of the public. In terms of their nature, both are crystalline. The applicants' goods are for industrial uses, such as treating roads. The opponent's goods are principally used for baking on an industrial scale. The trade channels for baking powder and raw salt would differ as between the commercial trade channels for the food industry and the trade channels for the sectors that might require raw salt for industrial purposes. However, a by-product of the opponent's goods is "sodium salts". Given that there is an overlap in that both raw salt and these salts are used for industrial purposes, I find the respective goods to be of medium similarity.

## Class 29

### *Ingredients*

35. The applicants' "seaweed extracts for food" and "alginates for culinary purposes", by comparison with the opponent's "spiced mixtures", are all powdered and all add piquancy to a dish. The respective goods would also be found in close proximity in the supermarket. They are neither complementary, nor are they in competition. I find the respective goods to be of medium similarity.

36. I compare the applicants' "albumen for culinary purposes" (egg white), "coconut, desiccated", "raisins", "fruit peel", "almonds, ground", "mincemeat made from fruits" and "fruit-based fillings for cakes ..." with the opponent's "Powdered flour products, especially "knedlíky" (dumplings), small pancakes, gougelhopf, gingerbread, potato pancakes, cake batter, chocolate cake". I take the items that follow the word "especially" to be examples of powdered flour products and so I do not consider the word "especially" to limit this term. As such, the examples given are a non-exhaustive list and this term could include bread as well as cakes. While the applicants' goods are baking ingredients that would be found in the baking aisle, they are not the finished article that constitutes a powdered flour products such as a cake or a loaf of bread. These latter goods would be found in the baked goods and bread aisles of a supermarket. They are not in competition, nor are they complementary. While they could be important to the opponent's powdered flour products, customers would not think that the responsibility for the respective goods lies with the same undertaking. Even the applicants' fruit-based fillings for cakes would not be thought to be made by the same company as that which baked powdered flour products. I find the respective goods to be dissimilar.

### *Vegetables*

37. I compare the applicants' "vegetables, preserved", "vegetables, cooked" and "vegetables, dried" with the opponent's soup. In terms of their nature, both the applicants' goods and the opponent's soup have been processed, and soup's main ingredient (or at least a key ingredient) is vegetables. While both would be sold in a supermarket, they would be shelved separately from soup, with preserved and dried vegetables being in the cooks' ingredients section, albeit cooked vegetables are usually tinned and might be in close proximity to tinned soup. The respective goods are not complementary, but they would be in competition to the extent of a consumer making a choice between ready-made soup and making their own soup. I find the respective goods to be of medium similarity.

38. By virtue of the same analysis as that carried out above for the applicants' processed vegetables, I also find the applicants' "soya beans, preserved, for food", "onions, preserved", "artichokes, preserved" and "sweet corn, processed" to be of medium similarity.
39. While "sauerkraut" (pickled cabbage) is not found in soup, it is a preserved vegetable. In the absence of a fallback specification, it too is deemed to be of medium similarity.
40. Although "mushrooms, preserved" are fungi as opposed to vegetables, they have the same nature as vegetables and are commonly found in soup, so I find these goods to also be of medium similarity.
41. The applicants' "vegetable salads" and "vegetable mousses" contain vegetables, as does soup, and both sets of goods are the finished article. They differ in that soup is heated up while vegetable salads and mousses can be eaten as cold starters. The respective goods would not be found on the same shelves in the supermarket. They are not complementary, but they are in competition in respect of choosing goods that would serve as a starter. I find the respective goods to be of medium similarity.
42. The applicants' "vegetable chips" and "vegetable-based snack foods" contain vegetables, as does soup, and both sets of goods are the finished article. They differ in that soup is heated up while snack foods are not. The respective goods would not be found on the same shelves in the supermarket. They are not complementary, but they are in competition to a degree in respect of choosing a small meal or snack. I find the respective goods to be of low similarity.
43. The applicants' "tofu" is plant protein that is not typically used as an ingredient in the opponent's soup and has a different texture from vegetables. I find it to be dissimilar.
44. The applicants' "tofu-based snacks" are derived from plant protein rather than vegetables, and I find these goods to be dissimilar.

45. The applicants' "truffles, preserved" are fungi (like mushrooms), they are not normally found in soup. They are a premium foodstuff which is difficult to obtain. Truffles are added in small quantities to dishes such as pasta. I find these goods to be dissimilar to the opponent's goods.

### *Fruit*

46. Noting that the opponent's powdered flour products include cakes, I compare these to the applicants' "fruit jellies" which are desserts. Both can be categorised as sweet treats whose trade channels will overlap. While they are not complementary, they are in competition in respect of the choice between a cake or some jelly as a dessert. I find these goods to be of medium similarity.

47. I compare the applicants' "fruit-based fillings for ... pies" with the opponent's "semi-cooked instant pastry products". The applicants' goods are a baking ingredient that would be found in the baking ingredients aisle of a supermarket. Semi-cooked instant pastry products are the finished article, albeit these goods require heating to complete the cooking process. These goods would be found in the baked goods aisle of a supermarket. They are not in competition, nor are they complementary because, while they could be important to the opponent's semi-cooked instant pastry products, customers would not think that the responsibility for the respective goods lies with the same undertaking. These goods are dissimilar.

48. I can find no common ground between the following of the applicants' fruit-based goods and the opponent's goods, which I find to be dissimilar: "fruit, preserved", "jams", "frozen fruits", "dates", "fruit, stewed", "fruit purées", "apple purée", "fruit pulp", "marmalade", "fruit salads", "fruit chips", "fruit preserved in alcohol", "fruits, tinned", "cranberry compote", "fruit-based snack food", "arrangements of processed fruit", "berries, preserved", "lemon juice for culinary purposes", "olives, preserved", "dried mangoes", "dried durians", "dried strawberries", "fruit leathers", "snack mixes consisting of dehydrated



fruit ...”, “fruit juices for cooking”, “preserved plums”, “cut fruits”, “glazed fruits”, “fruit paste”, “fruit jams”, “dried fruit mixes” and “bottled sliced fruits”.

49. I make the same finding for the applicants’ “ginger jam”.

### *Nuts*

50. I can find no common ground between the opponent’s goods and the following of the applicants’ nut-based goods: “nuts, prepared”, “peanuts, prepared”, “flavoured nuts”, “hazelnuts, prepared”, “nut-based spreads”, “blanched nuts”, “nut toppings” and “nut-based snack foods”. I find them to be dissimilar.

51. The applicants’ “snack mixes consisting of dehydrated fruit and processed nuts” are also dissimilar.

### *Fats, butters, oils*

52. I compare the applicants’ “jellies for food” and “gelatine” with the opponent’s “roux”. Roux is defined by the online Oxford English Dictionary as, “A mixture of fat (esp. butter) and flour heated together and used in making sauces and soups, generally as a thickening agent or to impart flavour.” Jellies are used to thicken and stabilise desserts such as jelly and custard. As such, while they share the broad purpose of thickening foodstuffs, the former is used in savoury dishes, while the latter is used in sweet dishes. Roux would be found in the cooks’ ingredients section of the supermarket, while jellies would be found in the baking section. They are neither in competition, nor are they complementary. I find the respective goods to be dissimilar.

53. I compare the applicants’ fats, butters and oils (“edible fats”, “peanut butter”, “coconut butter”, “rape oil for food”, “oils for food”, “maize oil for food”, “palm kernel oil for food”, “sesame oil for food”, “palm oil for food”, “olive oil for

food”, “sunflower oil for food”, “coconut fat”, “coconut oil for food” and “organic coconut oil for culinary purposes”) with the opponent’s “roux”.

54. “Edible fats” have a very wide variety of uses, whereas the fat in roux has a specific purpose in combination with flour. The respective goods would be found in separate parts of a supermarket – the applicants’ goods, such as lard, in the “dairy” section along with butter and milk, the opponent’s goods in the cooks’ ingredients section. I therefore find the applicants’ edible fats to be dissimilar to roux. I make the same finding for “coconut fat”.

55. While the applicants’ oils are widely used for frying food or in salads, roux has a very specific function. Furthermore, the respective goods would be found in different parts of a supermarket – oils would be found in the cooking oil section, whereas roux would be found in the cooks’ ingredients section. I find the applicants’ oils to be dissimilar.

56. I make the same finding for the applicants’ butters which are of the non-dairy variety as distinct from the dairy butter that would be used in roux.

### *Milk*

57. I compare the applicants’ “milk shakes” and “oat milk” with the opponent’s “Powders for making beverages”. They differ in nature – liquid versus powder. However, they all have the broad purpose of being intended to be drunk, albeit powders need to be made up into a drink. In terms of trade channels, the respective goods won’t necessarily be shelved in close proximity. The respective goods are not complementary although there is a degree of competition in that the consumer may choose a pre-made milk shake or oat milk as a beverage, their powdered equivalents, or a different powdered beverage. I find the respective goods to be of medium similarity.

### *Miscellaneous*

58. I compare the applicants’ “uncooked hamburger patties” with the opponent’s “... meat broths ...”. They are both meat-based, but the applicants’ goods

are solid, while the opponent's goods are liquid. Both are the finished article and both would be heated. They would be found in different parts of the supermarket. They are not complementary, but they are in competition to the extent that the consumer may choose between them when purchasing something that would constitute a small meal. I find these goods to be of medium similarity.

59. The applicants' "vegetable-based cream" is equivalent to a dairy product. The only potential point of comparison between these goods and the opponent's is the dairy butter that is sometimes found in roux, but this is too tenuous a connection for a finding of similarity. Vegetable-based cream would be found in a different part of the supermarket from roux and is not in competition with the opponent's goods, nor is it complementary. These goods are dissimilar.
60. The applicants' "pollen prepared as foodstuff" is a specialised food supplement. It is part of a flower and would be added to a dish or taken separately and is therefore very different to the opponent's soups, powdered flour products and cereals. It would be found in health food shops or the supplements section of the supermarket, away from the opponent's goods. It is not in competition with, nor is it complementary to, the opponent's goods. It is dissimilar.
61. The applicants' "aloe vera prepared for human consumption" is also a specialised food which might form part of a dish, but it is not found in the opponent's soups. In contrast to the opponent's goods, it is not commonly found in supermarkets. It is not in competition with, nor is it complementary to, the opponent's goods. It is dissimilar.
62. "Edible insects, not live" are highly specialised goods which have nothing in common with the opponent's goods. They are dissimilar.

## Class 30

### *Condiments*

63. The applicants' "cooking salt", "salt for preserving foodstuffs" and "celery salt" are dissimilar to the industrial level salts that are a by-product of the opponent's Class 1 goods, being for domestic use. However, by comparison with the opponent's "spiced mixtures", both sets of goods are relatively finely ground, in granular and powdered form respectively. Both can add piquancy to a dish. The respective goods would also be found in close proximity in the supermarket. They are neither complementary, nor are they in competition. I find the respective goods to be of medium similarity.
64. "Mustard meal", or ground mustard, can be used as a condiment or in cooking and, in comparison with "spiced mixtures", both are powdered. Both add piquancy to a dish. The respective goods would also be found in close proximity in the supermarket. They are neither complementary, nor are they in competition. I find the respective goods to be of medium similarity.
65. The applicants' "Seaweed [condiment]" by comparison with the opponent's "spiced mixtures", are both powdered and both add piquancy to a dish. The respective goods would also be found in close proximity in the supermarket. They are neither complementary, nor are they in competition. I find the respective goods to be of medium similarity.
66. The applicants' "vinegar" and "beer vinegar" are liquids, as are the opponent's "sauces (condiments)". While vinegar is less viscous than sauces, such as tomato sauce, all can function as condiments and all are poured from a bottle. The respective goods are likely to be shelved in close proximity in the supermarket. They are not in competition, nor are they complementary. I find the respective goods to be of medium similarity.
67. The applicants' "capers" (the online Cambridge Dictionary defines a "caper" as "a small, dark green flower bud that is used as an ingredient to give a

slightly sour taste to food”) are different from the opponent’s “sauces (condiments)”. The former goods are pickled and solid as opposed to the opponent’s liquid goods. They would be found in different parts of the supermarket and are neither complementary nor in competition. These goods are dissimilar.

### *Ingredients*

68. I compare the applicants’ “almond paste” and “marzipan” with the opponent’s “Powdered flour products”. The applicants’ goods are a baking ingredient that would be found in the baking aisle and are not the finished article that a powdered flour product is. These latter goods would be found in the baked goods and bread aisles of a supermarket. They are not in competition, nor are they complementary. While the applicants’ goods could be important to the opponent’s powdered flour products, customers would not think that the responsibility for the respective goods lies with the same undertaking. I find the respective goods to be dissimilar.

### *Coffee, cocoa, tea*

69. The applicants’ “vegetal preparations for use as coffee substitutes”, “chicory [coffee substitute]” and “artificial coffee” are identical to the opponent’s “foodstuffs for use as coffee substitutes”.

70. I find the applicants’ “coffee flavourings”, “coffee”, “unroasted coffee”, “coffee-based beverages” and “coffee extracts” to be *Merix* identical to the opponent’s “coffee-based products” in that the goods designated by the trade mark application are included in a more general category designated by the earlier mark.

71. The applicants’ “cocoa”, “cocoa-based beverages”, “chocolate-based beverages” and “cocoa extracts for human consumption” are *Merix* identical to the opponent’s “powders for making beverages” in that the goods designated by the trade mark application are included in a more general category designated by the earlier mark.

72. I compare the applicants' tea-based goods ("infusions, not medicinal"; "tea"; "tea-based beverages", "flowers or leaves for use as tea substitutes", "chamomile-based beverages", "roasted brown rice tea", "tea-based beverages with fruit flavoring" and "tea extracts") with the opponent's "coffee-based products". Tea and coffee differ in terms of flavour, and tea takes the form of leaves while coffee takes the form of ground beans. However, both are generally brewed with hot water. The trade channels are the same – they are shelved in close proximity in supermarkets. They are not complementary, but they are in competition, a common choice for the consumer being between tea and coffee. I find the respective goods to be of medium similarity.

*Bread, biscuits, pastry, cereals*

73. I find the applicants' "unleavened bread", "rusks", "biscuits", "malt biscuits", "waffles", "buns", "pancakes", "bread", "petit-beurre biscuits", "bread rolls", "crackers", "breadcrumbs" and "gluten-free bread" to be *Meric* identical to the opponent's "powdered flour products" in that the goods designated by the trade mark application are included in a more general category designated by the earlier mark.

74. The applicants' "cereal preparations" are *Meric* identical to the applicants' "rice-based puffed cereals" in that the goods designated by the earlier mark are included in a more general category designated by the trade mark application.

75. The applicant's "frozen pastries", "vegetable pies", "pies" and "frozen pies" are highly similar to the opponent's "semi-cooked instant pastry products". All have pastry as their major ingredient and all are the finished article that needs to be heated before being served.

76. The applicants' "groats for human food", "crushed oats", "husked oats", "oat-based food", "oat flakes", "oatmeal" and "muesli" are highly similar to the opponent's "oat porridge as food".
77. I compare the applicants' "corn flakes" with the opponent's "rice-based puffed cereals". While one derives from corn and the other from rice, they are both breakfast cereals that would be found next to each other in the supermarket. They are not complementary, but they are in direct competition. I find these goods to be highly similar.
78. I compare the applicants' "sandwiches" to the opponent's "powdered flour products". Sandwiches are made from bread, a powdered flour product. The respective goods would, however, be found in different parts of a supermarket. The goods are not complementary, but there would be competition where the consumer contemplated buying a loaf of bread from which to make a sandwich and a ready-made sandwich. I find the respective goods to be of medium similarity.
79. I compare the applicants' "high-protein cereal bars", "cereal bars", and "muesli bars" with the opponent's "rice-based puffed cereals". They differ to the extent that the applicant's goods are in bar form, while milk is added to the opponent's goods. However, they are all items that can be eaten for breakfast and would be found in relatively close proximity in the supermarket. They are not complementary, but they are in direct competition. I find these goods to be of medium similarity.
80. I compare the applicants' "popcorn", "chips [cereal products]", "cereal-based snack food", "rice-based snack food", "corn-based snack food" with the opponent's "rice-based puffed cereals". While all the goods derive from types of cereal and are the finished article, their methods of use differ. Breakfast cereal is generally eaten in the morning, but snacks can be eaten at any time of the day. The respective goods are likely to be shelved separately in a supermarket – in the crisps and breakfast cereal sections. The goods are not complementary, but they are competitive to a limited

degree when the consumer considers buying breakfast cereal as a snack. I find the respective goods to be of low similarity.

81. I compare the applicants' "corn flour", "soya flour", "wheat flour", "tapioca flour", "nut flours" and "dough" with the opponent's "powdered flour products". While flour and dough are important components of powdered flour products, particularly bread, the former would be found in the baking section of a supermarket, while the latter would be found in the baked goods and bread aisles. They are not complementary because customers would not think that the responsibility for the respective goods lies with the same undertaking. However, they would be in competition to the extent that the consumer may choose to buy a loaf of bread, for example, or assemble the ingredients to bake it at home themselves. I find these goods to be of low similarity.

82. While the applicants' "barley meal", "corn, milled", "corn, roasted", "husked barley", "crushed barley", "hominy", and "malt for human consumption" might serve as raw ingredients for the opponent's "powdered flour products", the former would be found in a different part of the supermarket from the baked goods and bread aisles. The respective goods are not in meaningful competition nor are they complementary. I find these goods to be dissimilar.

### *Seeds*

83. The applicants' "seeds, prepared" and "sunflower seeds, prepared" differ from the opponent's goods, whether as a baking ingredient for its powdered flour products or in the form of a snack where they differ in nature from the opponent's cereals. In either use case, they are found in different parts of the supermarket from the opponent's goods. They are neither complementary, nor are they in competition.



## *Herbs and spices*

84. The applicants' "spices" are *Meric* identical to the opponent's "spiced mixtures" in that the goods designated by the earlier mark are included in a more general category designated by the trade mark application.
85. I compare the applicants' "star aniseed", "cinnamon [spice]", "curry [spice]", "cloves [spice]", "turmeric", "ginger [spice]", "nutmegs" "saffron [seasoning]" and "ground ginger" with the opponent's "spiced mixtures". While the applicants' goods are individual spices rather than a mixture of spices, they would all be found on the herbs and spices shelf in the supermarket. They all have the same broad purpose, that of adding piquancy to a dish, albeit particular spices or mixtures of spices will have different effects. The respective goods are complementary to the extent that mixtures could be made up from the spices listed. Customers would certainly think that the responsibility for individual spices and spiced mixtures lay with the same undertaking. The respective goods would also be in competition to the degree that a customer may choose individual spices to combine themselves rather than buying an equivalent mixture. I find the respective goods to be highly similar.
86. I compare the applicants' herbs ("cilantro, dried", "mint, dried", "basil, dried", "dried coriander seeds for use as seasoning" and "dried coriander for use as seasoning") and "processed seeds for use as a seasoning" with the opponent's "spiced mixtures". The respective goods would all be found on the herbs and spices shelf in the supermarket. They all have the same broad purpose, that of adding flavour to a dish. Customers would think that the responsibility for the goods lay with the same undertaking. However, the respective goods are not complementary, nor are they in competition. I find the goods to be of low similarity.

## *Vegetables*

87. Using the same analysis as that carried out for the applicants' dried vegetables, I find the applicants' "bean meal" to be of medium similarity to the opponent's soup.

## *Confectionary and desserts*

88. Noting that the opponent's powdered flour products include cakes, I compare these to the applicant's confectionary, ice cream-based goods and other desserts ("peppermint sweets", "sweets", "caramels [sweets]", "chocolate", "confectionery", "ice cream", "fondants [confectionery]", "binding agents for ice cream", "dulce de leche", "pralines", "liquorice [confectionery]", "sorbets [ices]", "edible ices", "powders for making ice cream", "almond confectionery", "peanut confectionery", "stick liquorice [confectionery]", "fruit jellies [confectionery]", "fruit coulis [sauces]", "dessert mousses [confectionery]", "chocolate-coated nuts", "ice cream gateaux", "ice cream bars", "ice cream desserts", "ice cream sandwiches", "fruit ice cream", "confectionery ices", "ice cream mixes", "ice cream cones", "aromatic preparations for ice-creams", "organic binding agents for ice cream", "non-dairy ice cream", "sherbet [confectionery]", "confectionery bars", "edible fruit ices", "fruit drops [confectionery]" and "tiramisu"). All can be categorised as sweet treats whose trade channels will overlap. While they are not complementary, they are in competition in respect of the choice between a cake, some sweets, or a dessert. I find these goods to be of medium similarity.

89. I find no similarity between the applicants' sugars and sweeteners ("sugar", "golden syrup", "honey", "palm sugar", "agave syrup [natural sweetener]" and "natural sweeteners") and the opponent's goods. While they could be found in the opponent's "powdered flour products" as an ingredient, that is not a sufficient basis for similarity.

90. The applicants' "chewing gum" is dissimilar to the opponent's powdered flour products which include cakes. While both may be sweet, that is not a

sufficient basis for similarity in that chewing gum is different in respect of nature, purpose, method of use, and trade channels.

91. The applicants' "ice for refreshment" is also dissimilar. Ice is used to make drinks cold and has nothing in common with the opponent's goods.

### *Supplements*

92. The applicant's supplements - "propolis" and "royal jelly" - are food supplements. They are very different to the opponent's soups, powdered flour products and cereals. They would be found in health food shops or the supplements section of the supermarket, away from the opponent's goods. They are not in competition with, nor are they complementary to, the opponent's goods. They are dissimilar.

### Class 32

93. The applicants' "powders for effervescing beverages" are identical to the opponent's "powders for making sparkling beverages".

94. The applicants' "fruit nectars, non-alcoholic", "non-alcoholic fruit extracts", "non-alcoholic preparations for making beverages", "syrups for beverages"; "syrups for lemonade", "fruit nectars", "concentrates used in the preparation of soft drinks" and "syrups for making fruit-flavored drinks" are highly similar to the opponent's "powders for making beverages".

95. The applicants' "pastilles for effervescing beverages" and "preparations for making carbonated water" are highly similar to the opponent's "powders for making sparkling beverages".

96. I compare the applicants' non-alcoholic drinks ("ginger beer", "fruit juices", "lemonades", "vegetable juices [beverages]", "orgeat", "sherbets [beverages]", "tomato juice [beverage]", "sarsaparilla [non-alcoholic beverage]", "isotonic beverages", "smoothies", "soya-based beverages, other than milk substitutes", "protein-enriched sports beverages", "rice-based

beverages, other than milk substitutes”, “aperitifs, non-alcoholic”, “cocktails, non-alcoholic”, “cider, non-alcoholic”, “non-alcoholic punch”, “non-alcoholic beverages flavoured with coffee”, “non-alcoholic beverages flavoured with tea”, “soft drinks”, “non-alcoholic cordials”, “aloe vera juices”, “concentrated fruit juices”, “aerated fruit juices”, “non-alcoholic beverages containing fruit juices”, “non-alcoholic beverages containing vegetable juices”, “fruit beverages and fruit juices”, “beverages consisting of a blend of fruit and vegetable juices”, “colas [soft drinks]”, “non-carbonated soft drinks”, “non-alcoholic malt beverages”, “non-alcoholic flavored carbonated beverages”, “fruit-flavored soft drinks”, “fruit-based soft drinks flavored with tea”, “fruit beverages”, “fruit-flavored beverages”, “fruit-based beverages”, “vegetable-based beverages”, “nutritionally fortified beverages”, “frozen carbonated beverages”, “root beer”, “energy drinks” and “energy drinks containing caffeine”) with the opponent’s “powders for making beverages” and “powders for making sparkling beverages”. While the applicants’ goods are finished drink products, the opponent’s goods are diluted with still or carbonated water to make comparable drinks. They both have the broad purpose of being drunk, but they differ in their method of use. They will not be found on the same shelf in the supermarket, but they could be found in close proximity. While they are not complementary, they are in direct competition as between pre-made drinks and drinks that could be made up at home. The respective goods are of medium similarity.

97. I make the same finding for the applicants’ “vitamin enriched sparkling water [beverages]”, “flavored mineral water” and “nutritionally fortified water”, whereby vitamin, flavouring, and ingredients for nutritional fortification would be available in powdered form and could be added to water to make a beverage that would be in competition with the applicants’ finished drink products.

98. “Waters [beverages]” covers and includes vitamin enriched, flavoured and nutritionally fortified waters and in the absence of a fallback specification, the same outcome applies.

99. The remaining “lithia water”; “mineral water [beverages]”, “table waters”, “soda water”, “carbonated water”, “carbonated mineral water” and “mineral enriched water [beverages]” are dissimilar to the opponent’s “powders for making beverages” and “powders for making sparkling beverages” because they are self-contained drinks with no additional ingredients that need to be replicated in powdered form. Any naturally occurring mineral content in the applicants’ goods is not generally available in equivalent powdered form.
100. As alcoholic beverages are not ordinarily available in powdered form and there are a number of stages that need to be gone through to make them, I consider the applicants’ “beer” and “malt beer” to be dissimilar to the opponent’s “powders for making beverages” and “powders for making sparkling beverages”.
101. The applicants’ “beer wort”, “malt wort” and “extracts of hops for making beer” are substances used in beer making. Beer making requires many more processes than simply diluting powders. These are specialist goods that would be sold through home brew outlets and to commercial brewers and I find them to be dissimilar to the opponent’s “powders for making beverages”.
102. The applicants’ “must” and “grape must, unfermented” are crushed grapes used in wine making. Wine making requires many more processes than simply diluting powders. Again, these are specialist goods that would be sold to people who make their own wine or to commercial wine makers and I find them to be dissimilar to the opponent’s “powders for making beverages”.

#### Class 43

103. The applicants’ “café services”, “cafeteria services”, “self-service cafeteria services”, “take-out restaurant services”, “fast-food restaurant services” and “take-away food and drink services” are necessarily different in nature and method of use by comparison with the opponent’s “ready-made soups ...”, “powdered flour products ...” and “coffee-based products”.

However, the trade channels coincide where the opponent's goods are available through supermarkets or in sit down and take away form as part of the opponent's services. The goods are also in meaningful competition with the applicants' services in that the consumer may choose to purchase the opponent's goods directly or consume them as part of the opponent's services. While the opponent's goods are important to the applicant, the consumer would not necessarily think that the responsibility for these goods and services lay with the same undertaking and so the respective goods and services are not complementary. I find the respective goods and services to be of low similarity.

104. In the absence of a fall back specification, the applicants' general food services – its "food and drink catering" and "food preparation services" – and its general "restaurant services" and "bar and restaurant services" encompass its café and take away services. As such, all of these services are also of low similarity.

105. The applicants' "self-service restaurant services", "bar services", "hotel services", "wine bar services" and "mobile restaurant services" are different from the opponent's "ready-made soups ...", "powdered flour products ..." and "coffee-based products". The opponent's goods – a bowl of soup, a cake, or a cup of coffee – are intended to be consumed relatively quickly and therefore the extent of coincidence of trade channels and the level of competition are not the same as with cafés and take aways. One generally uses the specified restaurant services, a bar, or a hotel, in order to spend some time savouring the experience. The respective services and goods are not complementary, and I find them to be dissimilar.

106. Where the applicants' services are purchased corporately, by businesses, schools, exhibitors, convention organisers and charities ("business catering services", "catering services for schools", "catering services for company cafeterias", "catering services for hospitality suites", "providing food and drink catering services for exhibition facilities", "providing food and drink catering services for convention facilities" and "providing food

to needy persons [charitable services]”), the above arguments about the extent to which there would be meaningful competition and a coincidence of trade channels no longer hold. In these cases, I find the goods and services to be dissimilar.

107. I also find the applicants’ “food sculpting” and “consultancy services relating to food preparation” (the latter being at too far a remove) to be dissimilar to the opponent’s goods.

108. As some degree of similarity between the goods and services is required for there to be a likelihood of confusion<sup>2</sup>, the opposition must fail in respect of the following goods and services in the applicants’ specification:

Class 29 Albumen for culinary purposes; edible fats; peanut butter; coconut butter; fruit, preserved; coconut, desiccated; rape oil for food; jams; frozen fruits; raisins; oils for food; dates; fruit, stewed; fruit pulp; ginger jam; maize oil for food; palm kernel oil for food; sesame oil for food; marmalade; palm oil for food; nuts, prepared; olives, preserved; jellies for food; gelatine; olive oil for food; fruit salads; sunflower oil for food; truffles, preserved; fruit peel; almonds, ground; peanuts, prepared; coconut fat; coconut oil for food; fruit chips; fruit preserved in alcohol; pollen prepared as foodstuff; tofu; fruits, tinned; apple purée; cranberry compote; fruit-based snack food; sunflower seeds, prepared; seeds, prepared; aloe vera prepared for human consumption; arrangements of processed fruit; flavoured nuts; hazelnuts, prepared; berries, preserved; lemon juice for culinary purposes; vegetable-based cream; edible insects, not live; nut-based spreads; dried mangoes; dried durians; dried strawberries; fruit leathers; snack mixes consisting of dehydrated fruit and processed nuts; tofu-based snacks; fruit juices for cooking; preserved plums; organic coconut oil for culinary purposes; cut fruits; glazed fruits; fruit paste; fruit jams; blanched nuts; fruit

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<sup>2</sup> *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA

purées; dried fruit mixes; nut toppings; bottled sliced fruits; mincemeat made from fruits; nut-based snack foods; fruit-based fillings for cakes and pies.

- Class 30 Almond paste; capers; chewing gum; marzipan; ice for refreshment; barley meal; corn, milled; corn, roasted; sugar; golden syrup; honey; palm sugar; agave syrup [natural sweetener]; natural sweeteners; husked barley; crushed barley; hominy; malt for human consumption; propolis; royal jelly.
- Class 32 Beer; malt beer; beer wort; lithia water; mineral water [beverages]; table waters; must; extracts of hops for making beer; malt wort; grape must, unfermented; soda water; carbonated water; carbonated mineral water; mineral enriched water [beverages].
- Class 43 Self-service restaurant services; bar services; food sculpting; hotel services; wine bar services; mobile restaurant services; business catering services; catering services for schools; catering services for company cafeterias; catering services for hospitality suites; consultancy services relating to food preparation; providing food and drink catering services for exhibition facilities; providing food and drink catering services for convention facilities; providing food to needy persons [charitable services].

### **The average consumer and the nature of the purchasing act**

109. 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.”

110. In respect of a corporate purchaser of salts for industrial use, the level of attention paid would be medium because the purchase might involve entering into a contract and such a bulk purchase would entail significant financial outlay. Visual factors would predominate during the purchasing process which would be via a website or through a visit to a depot where a logo would be encountered before any verbal interaction took place. Verbal elements therefore play a minor role.

111. In terms of the competing foodstuffs (finished articles and ingredients) and beverages (tea, coffee, and cocoa, soft drinks and their powdered equivalents), these would be bought directly from the shelves of a supermarket by the general public. While some thought would be given to these purchases, they would generally be at modest cost and the level of attention paid would be low to medium at most. As the items would be picked up from the shelves, visual considerations would predominate, with verbal considerations being at a minimum.

112. Where the opponent’s goods are in conflict with the applicants’ café and take away services, the purchase of soup, a cake, or a coffee (either directly or as a result of using a food service) would require at least some thought. The level of attention paid here would be medium and scrutiny of websites and the exterior of premises prior to making a purchase mean that

visual factors would predominate. Having said that, I do not rule out verbal considerations.




### **Comparison of the trade marks**

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

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

114. 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.

115. The respective trade marks are shown below:

| Opponent's trade marks  | Applicants' trade mark   |
|---|--|
| <p data-bbox="336 264 587 293">First earlier mark:</p>   |  |
| <p data-bbox="316 564 608 593">Second earlier mark:</p>  |  |

116. The opponent's first earlier mark is technically a figurative mark, but it is simply the word "VITANA" in bold block capitals snapped to a white rectangular background. The word is only thing that meaningfully forms the overall impression of the mark.

117. The opponent's second earlier mark is a figurative mark which features the word "Vitana" in stylized white text inside a black oval. The cross of the letter "t" extends across the width of the word to meet the right-hand end of the capital letter "V". While the stylistic elements are noticeable to a degree, the word is clearly dominant in forming the overall impression of the mark.

118. The applicants' mark is a figurative mark. The word "VITAINA" in block capitals sits below a device which comprises a leaf and an energetic figure whose outlines combine to form a heart shape. While the device is noticeable, one's eye is drawn to the word which makes the greater contribution in forming the overall impression.

119. The words in the respective marks share the same six letters in exactly the same sequence, the applicants' mark having an additional letter "I" before the shared "N". The difference in stylization between the word in

the first earlier mark and the applicants' mark is minimal. The difference in stylization between the second earlier mark and the applicants' mark is more pronounced. The applicants' mark has a device whereas the earlier marks do not. Overall, I find the respective marks to be of medium visual similarity, albeit the first earlier mark is higher up the medium range than the second earlier mark.

120. Aurally, the words "VITANA"/"VITAINA" are highly similar. They would be pronounced "VIT-AH-NAH" and "VIT-AY-NAH" respectively and thus begin and end identically. Although I think it is less likely, I do not discount the possibility that a significant proportion of average consumers would pronounce the words "VY-TAH-NAH"/"VY-TAY-NAH, but the level of aural similarity would remain the same. The device elements in the applicants' mark would not be pronounced by the consumer.

121. Both the words at issue are invented words. In respect of the words, they are conceptually neutral. However, the device in the applicants' mark consists of a leaf and an energetic figure which form a heart shape and would be perceived as such. These concepts have no counterpoint in the opponent's marks and therefore the respective marks are conceptually dissimilar.

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

122. 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).”

123. 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 or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities.

124. I must make an assessment of the inherent distinctive character of the earlier marks. The word “VITANA” is an invented word and therefore the earlier marks are inherently distinctive to a high degree.

### **Likelihood of confusion**

125. 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 and services down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser

degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods or services and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the opponent's trade mark, the average consumer for the goods and services and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

126. I have found the parties' marks to be visually similar to a medium degree, highly similar aurally, and conceptually dissimilar. I have identified the average consumer to be corporate consumer in the case of salts for industrial use, where I have found that they would pay a medium degree of attention. In respect of members of the public purchasing food and beverages, the level of attention paid would be low to medium at most, while when availing themselves of catering services it would be medium. Visual considerations would predominate in all cases. I have that the parties' goods and services range from identical to a low level of similarity, except where I have found them to be dissimilar. I have also found the earlier marks to be of a high inherent distinctive character.

127. The words "VITANA"/"VITAINA" dominate the overall impression conveyed by the respective marks. In that regard, the marks share the same six letters in exactly the same sequence, the only difference being the extra "I" in the applicants' mark placed before the "N". Furthermore, the word "VITANA" (which is almost identical to the word "VITAINA") is highly distinctive.

128. I must bear in mind that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely on the imperfect picture of them that they have in their mind. Given the very minor difference between the words, the principle of imperfect recollection would apply such that it is highly likely that the average

consumer would mis-recall one mark for the other. The stylistic differences are not so pronounced as to stick in the memory of the average consumer, nor is the device in the applicants' mark sufficiently memorable in the context of the near-identical invented words to be correctly attributed to the applicants' mark. On this basis, there is a likelihood of direct confusion by virtue of imperfect recollection, even for those goods that are of low similarity.

## CONCLUSION

129. The opposition has succeeded in relation to the following goods, for which the application is refused:

Class 1 Salt, raw

Class 29 Seaweed extracts for food; sauerkraut; vegetables, preserved; vegetables, cooked; vegetables, dried; fruit jellies; soya beans, preserved, for food; onions, preserved; vegetable salads; alginates for culinary purposes; mushrooms, preserved; milk shakes; vegetable mousses; artichokes, preserved; oat milk; sweet corn, processed; vegetable chips; vegetable-based snack foods; uncooked hamburger patties.

Class 30 Seaweed [condiment]; star aniseed; infusions, not medicinal; coffee flavourings; unleavened bread; rusks; biscuits; malt biscuits; peppermint sweets; sweets; waffles; buns; cocoa; coffee; unroasted coffee; vegetal preparations for use as coffee substitutes; caramels [sweets]; cinnamon [spice]; curry [spice]; cereal preparations; chicory [coffee substitute]; tea; chocolate; cloves [spice]; confectionery; corn flakes; popcorn; ice cream; pancakes; cooking salt; salt for preserving foodstuffs; turmeric; ginger [spice]; spices; flour; bean meal; corn flour; mustard meal; soya flour; wheat flour; fondants [confectionery]; binding agents for ice cream; groats for human food; vinegar; dulce de leche; bread; nutmegs; pies; sandwiches; petit-beurre biscuits;

bread rolls; pralines; liquorice [confectionery]; saffron [seasoning]; celery salt; sorbets [ices]; tapioca flour; edible ices; powders for making ice cream; almond confectionery; peanut confectionery; crushed oats; husked oats; oat-based food; oat flakes; oatmeal; stick liquorice [confectionery]; beer vinegar; coffee-based beverages; cocoa-based beverages; chocolate-based beverages; artificial coffee; chips [cereal products]; crackers; fruit jellies [confectionery]; fruit coulis [sauces]; muesli; tea-based beverages; breadcrumbs; cereal-based snack food; rice-based snack food; high-protein cereal bars; cereal bars; dough; flowers or leaves for use as tea substitutes; dessert mousses [confectionery]; chocolate-coated nuts; nut flours; chamomile-based beverages; processed seeds for use as a seasoning; ice cream gateaux; ice cream bars; ice cream desserts; ice cream sandwiches; fruit ice cream; confectionery ices; ice cream mixes; ice cream cones; aromatic preparations for ice-creams; organic binding agents for ice cream; non-dairy ice cream; sherbet [confectionery]; cilantro, dried; mint, dried; basil, dried; dried coriander seeds for use as seasoning; dried coriander for use as seasoning; roasted brown rice tea; corn-based snack food; muesli bars; confectionery bars; edible fruit ices; fruit drops [confectionery]; tea-based beverages with fruit flavoring; vegetable pies; cocoa extracts for human consumption; frozen pies; frozen pastries; gluten-free bread; tiramisu; tea extracts; coffee extracts; ground ginger.

Class 32 Non-alcoholic fruit extracts; ginger beer; non-alcoholic preparations for making beverages; fruit juices; syrups for beverages; waters [beverages]; preparations for making carbonated water; lemonades; vegetable juices [beverages]; syrups for lemonade; orgeat; sherbets [beverages]; tomato juice [beverage]; pastilles for effervescing beverages; powders for effervescing beverages; sarsaparilla [non-alcoholic beverage]; aperitifs, non-alcoholic; cocktails, non-alcoholic; fruit nectars,



non-alcoholic; isotonic beverages; cider, non-alcoholic; smoothies; soya-based beverages, other than milk substitutes; protein-enriched sports beverages; rice-based beverages, other than milk substitutes; non-alcoholic beverages flavoured with coffee; non-alcoholic beverages flavoured with tea; soft drinks; vitamin enriched sparkling water [beverages]; flavored mineral water; non-alcoholic cordials; aloe vera juices; concentrated fruit juices; aerated fruit juices; non-alcoholic beverages containing fruit juices; non-alcoholic beverages containing vegetable juices; fruit beverages and fruit juices; beverages consisting of a blend of fruit and vegetable juices; non-alcoholic punch; colas [soft drinks]; non-carbonated soft drinks; non-alcoholic malt beverages; non-alcoholic flavored carbonated beverages; fruit-flavored soft drinks; concentrates used in the preparation of soft drinks; fruit-based soft drinks flavored with tea; fruit beverages; fruit-flavored beverages; fruit-based beverages; syrups for making fruit-flavored drinks; vegetable-based beverages; nutritionally fortified water; nutritionally fortified beverages; frozen carbonated beverages; root beer; energy drinks; energy drinks containing caffeine.

Class 43 Food and drink catering; restaurant services; café services; cafeteria services; self-service cafeteria services; take-out restaurant services; food preparation services; fast-food restaurant services; bar and restaurant services; take-away food and drink services.

130. The application will proceed to registration, subject to appeal, in respect of the following goods and services:

Class 29 Albumen for culinary purposes; edible fats; peanut butter; coconut butter; fruit, preserved; coconut, desiccated; rape oil for food; jams; frozen fruits; raisins; oils for food; dates; fruit, stewed; fruit pulp; ginger jam; maize oil for food; palm kernel oil

for food; sesame oil for food; marmalade; palm oil for food; nuts, prepared; olives, preserved; jellies for food; gelatine; olive oil for food; fruit salads; sunflower oil for food; truffles, preserved; fruit peel; almonds, ground; peanuts, prepared; coconut fat; coconut oil for food; fruit chips; fruit preserved in alcohol; pollen prepared as foodstuff; tofu; fruits, tinned; apple purée; cranberry compote; fruit-based snack food; sunflower seeds, prepared; seeds, prepared; aloe vera prepared for human consumption; arrangements of processed fruit; flavoured nuts; hazelnuts, prepared; berries, preserved; lemon juice for culinary purposes; vegetable-based cream; edible insects, not live; nut-based spreads; dried mangoes; dried durians; dried strawberries; fruit leathers; snack mixes consisting of dehydrated fruit and processed nuts; tofu-based snacks; fruit juices for cooking; preserved plums; organic coconut oil for culinary purposes; cut fruits; glazed fruits; fruit paste; fruit jams; blanched nuts; fruit purées; dried fruit mixes; nut toppings; bottled sliced fruits; mincemeat made from fruits; nut-based snack foods; fruit-based fillings for cakes and pies.

- Class 30 Almond paste; capers; chewing gum; marzipan; ice for refreshment; barley meal; corn, milled; corn, roasted; sugar; golden syrup; honey; palm sugar; agave syrup [natural sweetener]; natural sweeteners; husked barley; crushed barley; hominy; malt for human consumption; propolis; royal jelly.
- Class 32 Beer; malt beer; beer wort; lithia water; mineral water [beverages]; table waters; must; extracts of hops for making beer; malt wort; grape must, unfermented; soda water; carbonated water; carbonated mineral water; mineral enriched water [beverages].
- Class 43 Self-service restaurant services; bar services; food sculpting; hotel services; wine bar services; mobile restaurant services;

business catering services; catering services for schools; catering services for company cafeterias; catering services for hospitality suites; consultancy services relating to food preparation; providing food and drink catering services for exhibition facilities; providing food and drink catering services for convention facilities; providing food to needy persons [charitable services].

131. The applicants' uncontested Class 1, Class 3, Class 5, Class 11, Class 21, Class 25, Class 31, Class 35, Class 40 and Class 42 goods and services also proceed to registration.

## **COSTS**

132. In respect of the contested goods and services, the opponent has been more successful than the applicants. Accordingly, I make a proportionate costs award based on Tribunal Practice Notice 2 of 2016:

|   |      |
|---|------|
| Preparing a statement and considering the other side's statement: | £200 |
| Official fees:  | £100 |
| Total:  | £300 |

133. I order ENRICO ALEXANDER FERNANDO FEULNER and FEDERICO MAXIMILIAN SEBASTIAN FEULNER, being jointly and severally liable, to pay Orkla Foods Česko a Slovensko a.s. the sum of £300. 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 26<sup>th</sup> day of January 2023**

**JOHN WILLIAMS**  
**For the Registrar**

## Annex 1

The applicants' full specification:

- Class 1      Albumin [animal or vegetable, raw material]; malt albumen; anti-incrustants; citric acid for industrial purposes; distilled water; emulsifiers; fertilizers; fertilizing preparations; protein [raw material]; salt, raw; enzyme preparations for the food industry; enzymes for the food industry; glucose for the food industry; lecithin for the food industry; lecithin for industrial purposes; pectin for the food industry; pectin for industrial purposes; tea extracts for use in the manufacture of pharmaceuticals; tea extracts for the food industry; tea extracts for use in the manufacture of cosmetics; vitamins for use in the manufacture of food supplements; vitamins for the food industry; antioxidants for use in the manufacture of cosmetics; antioxidants for use in the manufacture of pharmaceuticals; antioxidants for use in the manufacture of food supplements; proteins for use in manufacture; proteins for use in the manufacture of food supplements; proteins for the food industry; milk ferments for the food industry; casein for the food industry; vitamins for use in the manufacture of pharmaceuticals; vitamins for use in the manufacture of cosmetics; thymol for industrial purposes; oils for the preservation of food; beer preserving agents; plant extracts, other than essential oils, for use in the manufacture of cosmetics; agar-agar for industrial purposes; flavonoids [phenolic compounds] for industrial purposes; but excluding chemical substances for horticulture, agriculture and forestry.
- Class 3      Almond oil; almond soap; amber [perfume]; soap; soap for brightening textile; badian essence; beauty masks; bergamot oil; laundry bleach; mouthwashes, not for medical purposes; hair lotions; essential oils of cedarwood; volcanic ash for cleaning; hair dyes; essential oils of lemon; eau de Cologne; cosmetics; stain removers; creams for leather; dentifrices; lavender water; scented water; quillaia bark for washing; incense; ethereal essences; essential oils; extracts of flowers

[perfumes]; make-up; cleaning preparations; bases for flower perfumes; fumigation preparations [perfumes]; cake flavourings [essential oils]; gaultheria oil; oils for cosmetic purposes; jasmine oil; lavender oil; oils for cleaning purposes; oils for perfumes and scents; rose oil; oils for toilet purposes; lotions for cosmetic purposes; mint essence [essential oil]; mint for perfumery; shampoos; perfumes; perfumery; cosmetic preparations for skin care; pumice stone; pomades for cosmetic purposes; deodorant soap; sachets for perfuming linen; cakes of toilet soap; alum stones [astringents]; almond milk for cosmetic purposes; aromatics [essential oils]; flavourings for beverages [essential oils]; bath salts, not for medical purposes; cosmetic preparations for slimming purposes; deodorants for human beings or for animals; fabric softeners for laundry use; shampoos for pets [non-medicated grooming preparations]; potpourris [fragrances]; breath freshening sprays; dry-cleaning preparations; dental bleaching gels; joss sticks; air fragrancing preparations; breath freshening strips; deodorants for pets; aloe vera preparations for cosmetic purposes; massage gels, other than for medical purposes; lip glosses; balms, other than for medical purposes; dry shampoos; essential oils of citron; henna [cosmetic dye]; bath preparations, not for medical purposes; hair conditioners; teeth whitening strips; food flavourings [essential oils]; phytocosmetic preparations; cleansers for intimate personal hygiene purposes, non medicated; herbal extracts for cosmetic purposes; shampoos for animals [non-medicated grooming preparations]; vaginal washes for personal sanitary or deodorant purposes; cosmetic oils; mousses [cosmetics]; natural cosmetics; organic cosmetics; cosmetic creams; non-medicated cosmetics; cosmetic kits; beauty care cosmetics; after-sun oils [cosmetics]; cosmetic hair care preparations; sun care preparations; henna for cosmetic purposes; essential oils for cosmetic purposes; perfumery, essential oils.

Class 5      Starch for dietetic or pharmaceutical purposes; dill oil for medical purposes; angostura bark for medical purposes; asthmatic tea; bath preparations for medical purposes; therapeutic preparations for the

bath; balsamic preparations for medical purposes; balms for medical purposes; bismuth preparations for pharmaceutical purposes; lead water; medicated sweets; medicinal mud; mud for baths; syrups for pharmaceutical purposes; vitamin preparations; condurango bark for medical purposes; depuratives; flowers of sulfur for pharmaceutical purposes; digestives for pharmaceutical purposes; powdered milk for babies; melissa water for pharmaceutical purposes; mineral waters for medical purposes; mineral water salts; barks for pharmaceutical purposes; elixirs [pharmaceutical preparations]; salts for medical purposes; salts for mineral water baths; eucalyptol for pharmaceutical purposes; fennel for medical purposes; medicinal infusions; medicinal tea; linseed for pharmaceutical purposes; medicinal oils; medicinal herbs; jujube, medicated; liquorice for pharmaceutical purposes; linseed meal for pharmaceutical purposes; lotions for pharmaceutical purposes; lupulin for pharmaceutical purposes; chewing gum for medical purposes; mint for pharmaceutical purposes; malt for pharmaceutical purposes; pomades for medical purposes; menthol; lotions for veterinary purposes; myrobalan bark for pharmaceutical purposes; ointments for pharmaceutical purposes; opodeldoc; pectin for pharmaceutical purposes; pharmaceutical preparations for skin care; herbal teas for medicinal purposes; medicinal roots; rhubarb roots for pharmaceutical purposes; tonics [medicines]; dietetic foods adapted for medical purposes; food for babies; almond milk for pharmaceutical purposes; by-products of the processing of cereals for dietetic or medical purposes; bicarbonate of soda for pharmaceutical purposes; lacteal flour for babies; malted milk beverages for medical purposes; milk sugar for pharmaceutical purposes; biological preparations for medical purposes; dietetic beverages adapted for medical purposes; crystallized rock sugar for medical purposes; lecithin for medical purposes; royal jelly for pharmaceutical purposes; medical preparations for slimming purposes; smoking herbs for medical purposes; glucose for medical purposes; extracts of hops for pharmaceutical purposes; castor oil for medical purposes; iodine for pharmaceutical purposes; dietetic substances adapted for medical use; biological preparations for

veterinary purposes; dietary fibre; enzymes for medical purposes; enzymes for veterinary purposes; enzyme preparations for medical purposes; enzyme preparations for veterinary purposes; preparations of trace elements for human and animal use; amino acids for medical purposes; amino acids for veterinary purposes; mineral food supplements; mouthwashes for medical purposes; nutritional supplements; medicinal hair growth preparations; air deodorizing preparations; aloe vera preparations for pharmaceutical purposes; slimming pills; antioxidant pills; dietary supplements for animals; albumin dietary supplements; linseed dietary supplements; linseed oil dietary supplements; wheat germ dietary supplements; yeast dietary supplements; royal jelly dietary supplements; propolis for pharmaceutical purposes; propolis dietary supplements; pollen dietary supplements; enzyme dietary supplements; glucose dietary supplements; lecithin dietary supplements; alginate dietary supplements; alginates for pharmaceutical purposes; protein dietary supplements; casein dietary supplements; protein supplements for animals; acne treatment preparations; medicated animal feed; infant formula; plant extracts for pharmaceutical purposes; pharmaceuticals; phytotherapy preparations for medical purposes; herbal extracts for medical purposes; immunostimulants; nutraceutical preparations for therapeutic or medical purposes; freeze-dried food adapted for medical purposes; homogenized food adapted for medical purposes; antibacterial soap; antibacterial handwashes; medicated shampoos; medicated hair lotions; medicated shampoos for pets; disinfectant soap; medicated soap; pharmaceutical preparations for treating dandruff; panty liners [sanitary]; disinfectants for hygiene purposes; sanitary panties; sanitary towels; diapers for incontinence; pants, absorbent, for incontinence; medicinal herbs in dried or preserved form; vitamin supplements; dietary food supplements; probiotic supplements; homeopathic supplements; liquid vitamin supplements; vitamin supplements for animals; vitamin and mineral supplements; dietary supplements consisting of vitamins; mineral dietary supplements for animals; dietary supplements for infants; dietary

supplements for pets; calcium supplements; zinc supplement lozenges; dietary supplements with a cosmetic effect; mineral dietary supplements for humans; wheat dietary supplements; zinc dietary supplements; fodder supplements for veterinary purposes; nutritional supplements consisting primarily of zinc; nutritional supplements consisting primarily of calcium; vitamin supplement patches; dietary supplements for controlling cholesterol; nutritional supplements consisting primarily of iron; nutritional supplements consisting primarily of magnesium; nutritional supplements consisting of fungal extracts; soy isoflavone dietary supplements; protein powder dietary supplements; dietary supplement drink mixes; pine pollen dietary supplements; bee pollen for use as a dietary food supplement; ground flaxseed fiber for use as a dietary supplement; prenatal vitamins; gummy vitamins; vitamins and vitamin preparations; vitamin tablets; vitamins for animals; vitamin drops; mixed vitamin preparations; effervescent vitamin tablets; vitamin C preparations; vitamin D preparations; vitamin B preparations; vitamin enriched bread for therapeutic purposes; mineral salts for medical purposes; mineral preparations for medical purposes; nutritional supplement energy bars; analgesic preparations; antipyretic analgesics; analeptics; anti-inflammatory analgesic plasters; oral analgesics; multi-purpose medicated analgesic balms; pharmaceutical preparations and substances with analgesic properties; extracts of medicinal plants; medicinal herbal extracts for medical purposes.

Class 11 Heat accumulators; air deodorizing apparatus; air cooling apparatus; air reheaters; air dryers; air filtering installations; hot air apparatus; coolers for furnaces; bakers' ovens; laboratory burners; burners; germicidal burners; fans [air-conditioning]; freezers; coffee roasters; heat regenerators; heating installations; heating installations [water]; heating boilers; heating apparatus for solid, liquid or gaseous fuels; heating apparatus, electric; drying apparatus; air-conditioning apparatus; cooking apparatus and installations; desiccating apparatus; heat exchangers, other than parts of machines; drying apparatus for



fodder and forage; fruit roasters; gas burners; gas boilers; germicidal lamps for purifying air; roasting apparatus; ionization apparatus for the treatment of air or water; malt roasters; air purifying apparatus and machines; drying apparatus and installations; sterilizers; roasters; air sterilizers; apparatus for dehydrating food waste; ice-cream making machines; animal feed drying apparatus; harvest drying apparatus; drying ovens; deep freezers; food dehydrators, electric.

Class 21 Thermally insulated containers for food; brushes; sprinklers; watering cans; bread baskets for household purposes; glass flasks [containers]; buckets; beer mugs; glass jars [carboys]; drinking vessels; heat-insulated containers for beverages; boxes for dispensing paper towels; soap boxes; tea caddies; bottles; insulating flasks; refrigerating bottles; bottle openers, electric and non-electric; nail brushes; heat-insulated containers; decanters; ceramics for household purposes; combs for animals; combs; moulds [kitchen utensils]; cocktail shakers; cosmetic utensils; fruit bowls; knife rests for the table; blenders, non-electric, for household purposes; sieves [household utensils]; ice cube moulds; scoops for household purposes; cookery moulds; cleaning instruments, hand-operated; large-toothed combs for the hair; dusting apparatus, non-electric; toilet cases; toilet paper dispensers; soap dispensers; funnels; spice sets; buckets made of woven fabrics; comb cases; flower pots; whisks, non-electric, for household purposes; fruit presses, non-electric, for household purposes; smoke absorbers for household purposes; cake moulds; drinking bottles for sports; pots; vegetable dishes; kitchen grinders, non-electric; utensils for household purposes; mills for household purposes, hand-operated; egg cups; opal glass; opaline glass; bread boards; paper plates; rolling pins, domestic; pie servers; trays of paper, for household purposes; nozzles for watering cans; pepper mills, hand-operated; pepper pots; porcelain ware; vases; soap holders; dustbins; graters for kitchen use; containers for household or kitchen use; napkin rings; salad bowls; salt cellars; syringes for watering flowers and plants; tea services [tableware]; table napkin holders; vessels of metal for making ices and iced drinks;

saucers; eyebrow brushes; sugar bowls; epergnes; cups; teapots; toilet utensils; tableware, other than knives, forks and spoons; perfume vaporizers; mugs; aerosol dispensers, not for medical purposes; table plates; heaters for feeding bottles, non-electric; shaving brushes; shaving brush stands; kettles, non-electric; toothbrushes; electric brushes, except parts of machines; coffee grinders, hand-operated; coffee services [tableware]; coffee percolators, non-electric; coasters, not of paper or textile; abrasive pads for kitchen purposes; deep fryers, non-electric; portable cool boxes, non-electric; water apparatus for cleaning teeth and gums; chamois leather for cleaning; wax-polishing appliances, non-electric, for shoes; cheese-dish covers; baskets for household purposes; trays for household purposes; cotton waste for cleaning; dish covers; trivets [table utensils]; jugs; kitchen containers; kitchen utensils; cooking utensils, non-electric; toothpick holders; toothbrushes, electric; deodorizing apparatus for personal use; brushes for cleaning tanks and containers; signboards of porcelain or glass; sponges for household purposes; feather-dusters; dusting cloths [rags]; fibreglass, other than for insulation or textile use; figurines of porcelain, ceramic, earthenware, terra-cotta or glass; coffeepots, non-electric; tea strainers; flasks; gloves for household purposes; tankards; cruet sets for oil and vinegar; polishing gloves; candle extinguishers; baby baths, portable; cages for household pets; cloth for washing floors; dishwashing brushes; indoor terrariums [plant cultivation]; litter boxes for pets; bread bins; chopsticks; cleaning tow; confectioners' decorating bags [pastry bags]; cookie [biscuit] cutters; cookie jars; cups of paper or plastic; drinking glasses; floss for dental purposes; gardening gloves; isothermic bags; lazy susans; lunch boxes; mixing spoons [kitchen utensils]; noodle machines, hand-operated; spatulas for kitchen use; abrasive sponges for scrubbing the skin; garlic presses [kitchen utensils]; disposable table plates; toilet paper holders; waste paper baskets; window-boxes; straws for drinking; baking mats; dripping pans; candle jars [holders]; food steamers, non-electric; crushers for kitchen use, non-electric; basting brushes; bulb basters; tortilla presses, non-electric [kitchen utensils]; egg separators, non-

electric, for household purposes; cold packs for chilling food and beverages; reusable ice cubes; place mats, not of paper or textile; decanter tags; wine aerators; heads for electric toothbrushes; piggy banks; ice tongs; salad tongs; serving ladles; pestles for kitchen use; mortars for kitchen use; ice cream scoops; nutcrackers; sugar tongs; spice jars; abrasive gloves for scrubbing vegetables; articles for cleaning purposes; ice scoops [barware].

Class 25 Footwear; bath sandals; bath slippers; stockings; sweat-absorbent stockings; heelpieces for stockings; berets; overalls; hosiery; dress shields; neck tube scarves; camisoles; boxer shorts; bodices [lingerie]; underwear; hoods [clothing]; cap peaks; sweaters; socks; clothing; hats; tights; wet suits for water-skiing; combinations [clothing]; sweat-absorbent underwear; ready-made clothing; ear muffs [clothing]; breeches for wear; trousers; cyclists' clothing; gloves [clothing]; scarves; esparto shoes or sandals; corsets [underclothing]; gaiter straps; gymnastic shoes; coats; waterproof clothing; leggings [leg warmers]; jerseys [clothing]; skirts; sports jerseys; cuffs; aprons [clothing]; fingerless gloves; slippers; pelerines; beach clothes; beach shoes; pyjamas; sandals; underpants; brassieres; heelpieces for footwear; stuff jackets [clothing]; jackets [clothing]; paper clothing; bathing caps; bathing trunks; bathing suits; bath robes; soles for footwear; shoes; sports shoes; footmuffs, not electrically heated; boots for sports; headbands [clothing]; petticoats; slips [underclothing]; teddies [underclothing]; clothing for gymnastics; clothing of imitations of leather; tee-shirts; paper hats [clothing]; skorts; ponchos; leggings [trousers]; jumper dresses; knickers; sports singlets; albs; sweat-absorbent socks; leotards; clothing for sports.

Class 29 Albumen for culinary purposes; seaweed extracts for food; edible fats; peanut butter; coconut butter; fruit, preserved; sauerkraut; coconut, desiccated; rape oil for food; jams; frozen fruits; raisins; vegetables, preserved; vegetables, cooked; vegetables, dried; oils for food; dates; fruit, stewed; fruit jellies; fruit pulp; ginger jam; soya beans, preserved,

for food; maize oil for food; palm kernel oil for food; sesame oil for food; marmalade; palm oil for food; nuts, prepared; onions, preserved; olives, preserved; jellies for food; gelatine; olive oil for food; vegetable salads; fruit salads; sunflower oil for food; truffles, preserved; fruit peel; alginates for culinary purposes; almonds, ground; peanuts, prepared; mushrooms, preserved; coconut fat; coconut oil for food; fruit chips; fruit preserved in alcohol; pollen prepared as foodstuff; tofu; fruits, tinned; apple purée; cranberry compote; fruit-based snack food; milk shakes; sunflower seeds, prepared; vegetable mousses; seeds, prepared; aloe vera prepared for human consumption; artichokes, preserved; arrangements of processed fruit; flavoured nuts; hazelnuts, prepared; berries, preserved; lemon juice for culinary purposes; oat milk; vegetable-based cream; edible insects, not live; sweet corn, processed; nut-based spreads; dried mangoes; dried durians; dried strawberries; fruit leathers; snack mixes consisting of dehydrated fruit and processed nuts; tofu-based snacks; fruit juices for cooking; preserved plums; organic coconut oil for culinary purposes; cut fruits; glazed fruits; fruit paste; fruit jams; blanched nuts; fruit purées; dried fruit mixes; nut toppings; bottled sliced fruits; mincemeat made from fruits; nut-based snack foods; fruit-based fillings for cakes and pies; vegetable chips; vegetable-based snack foods; uncooked hamburger patties.

Class 30 Seaweed [condiment]; almond paste; star aniseed; infusions, not medicinal; coffee flavourings; unleavened bread; rusks; biscuits; malt biscuits; peppermint sweets; sweets; waffles; buns; cocoa; coffee; unroasted coffee; vegetal preparations for use as coffee substitutes; capers; caramels [sweets]; cinnamon [spice]; curry [spice]; cereal preparations; chewing gum; chicory [coffee substitute]; tea; chocolate; marzipan; cloves [spice]; confectionery; corn flakes; popcorn; ice cream; pancakes; cooking salt; salt for preserving foodstuffs; turmeric; ginger [spice]; natural sweeteners; spices; flour; bean meal; corn flour; mustard meal; barley meal; soya flour; wheat flour; fondants [confectionery]; sugar; binding agents for ice cream; ice for

refreshment; groats for human food; vinegar; dulce de leche; corn, milled; corn, roasted; bread; golden syrup; honey; husked barley; nutmegs; pies; crushed barley; sandwiches; petit-beurre biscuits; bread rolls; hominy; pralines; liquorice [confectionery]; saffron [seasoning]; celery salt; sorbets [ices]; tapioca flour; edible ices; powders for making ice cream; almond confectionery; peanut confectionery; crushed oats; husked oats; oat-based food; oat flakes; oatmeal; stick liquorice [confectionery]; beer vinegar; coffee-based beverages; cocoa-based beverages; chocolate-based beverages; artificial coffee; chips [cereal products]; malt for human consumption; propolis; royal jelly; crackers; fruit jellies [confectionery]; fruit coulis [sauces]; muesli; tea-based beverages; breadcrumbs; cereal-based snack food; rice-based snack food; high-protein cereal bars; cereal bars; palm sugar; dough; flowers or leaves for use as tea substitutes; dessert mousses [confectionery]; chocolate-coated nuts; nut flours; agave syrup [natural sweetener]; chamomile-based beverages; processed seeds for use as a seasoning; ice cream gateaux; ice cream bars; ice cream desserts; ice cream sandwiches; fruit ice cream; confectionery ices; ice cream mixes; ice cream cones; aromatic preparations for ice-creams; organic binding agents for ice cream; non-dairy ice cream; sherbet [confectionery]; cilantro, dried; mint, dried; basil, dried; dried coriander seeds for use as seasoning; dried coriander for use as seasoning; roasted brown rice tea; corn-based snack food; muesli bars; confectionery bars; edible fruit ices; fruit drops [confectionery]; tea-based beverages with fruit flavoring; vegetable pies; cocoa extracts for human consumption; frozen pies; frozen pastries; gluten-free bread; tiramisu; tea extracts; coffee extracts; ground ginger.

Class 31 Citrus fruit, fresh; oats; berries, fresh; beet, fresh; bran; cocoa beans, raw; sugarcane; locust beans, raw; cereal seeds, unprocessed; mushrooms, fresh; oil cake; chestnuts, fresh; chicory roots; chicory, fresh; lemons, fresh; coconut shell; copra; vegetables, fresh; squashes, fresh; wreaths of natural flowers; beans, fresh; flowers, natural; flowers, dried, for decoration; pollen [raw material]; wheat; fruit, fresh; juniper

berries; grains [cereals]; seeds for planting; garden herbs, fresh; plants; seedlings; hops; kola nuts; lettuce, fresh; lentils, fresh; maize cake for cattle; fruit residue [marc]; hazelnuts, fresh; flower bulbs; onions, fresh; olives, fresh; oranges, fresh; barley; nettles; palms [leaves of the palm tree]; palm trees; mash for fattening livestock; pine cones; peppers [plants]; plants, dried, for decoration; leeks, fresh; peas, fresh; rhubarb, fresh; rose bushes; rye; edible sesame, unprocessed; truffles, fresh; residue in a still after distillation; almonds [fruits]; peanuts, fresh; rice, unprocessed; aloe vera plants; spinach, fresh; artichokes, fresh; garlic, fresh; vegetable marrows, fresh; edible linseed, unprocessed; arrangements of fresh fruit; unprocessed sweet corn ears [husked or unhusked]; herbs, dried, for decoration; organic fresh fruit; organic fresh herbs; organic fresh vegetables; fresh fruits and vegetables; algae for human consumption.

Class 32 Non-alcoholic fruit extracts; beer; ginger beer; malt beer; beer wort; non-alcoholic preparations for making beverages; fruit juices; syrups for beverages; waters [beverages]; lithia water; mineral water [beverages]; preparations for making carbonated water; table waters; must; lemonades; extracts of hops for making beer; vegetable juices [beverages]; syrups for lemonade; malt wort; grape must, unfermented; orgeat; soda water; sherbets [beverages]; tomato juice [beverage]; pastilles for effervescing beverages; powders for effervescing beverages; carbonated water; sarsaparilla [non-alcoholic beverage]; aperitifs, non-alcoholic; cocktails, non-alcoholic; fruit nectars, non-alcoholic; isotonic beverages; cider, non-alcoholic; smoothies; soya-based beverages, other than milk substitutes; protein-enriched sports beverages; rice-based beverages, other than milk substitutes; non-alcoholic beverages flavoured with coffee; non-alcoholic beverages flavoured with tea; soft drinks; vitamin enriched sparkling water [beverages]; flavored mineral water; carbonated mineral water; mineral enriched water [beverages]; non-alcoholic cordials; aloe vera juices; concentrated fruit juices; aerated fruit juices; non-alcoholic beverages containing fruit juices; non-alcoholic beverages containing vegetable

juices; fruit beverages and fruit juices; beverages consisting of a blend of fruit and vegetable juices; non-alcoholic punch; colas [soft drinks]; non-carbonated soft drinks; non-alcoholic malt beverages; non-alcoholic flavored carbonated beverages; fruit-flavored soft drinks; concentrates used in the preparation of soft drinks; fruit-based soft drinks flavored with tea; fruit beverages; fruit-flavored beverages; fruit-based beverages; syrups for making fruit-flavored drinks; vegetable-based beverages; nutritionally fortified water; nutritionally fortified beverages; frozen carbonated beverages; root beer; energy drinks; energy drinks containing caffeine.

Class 35 Import-export agency services; commercial information agency services; cost price analysis; dissemination of advertising matter; direct mail advertising; commercial or industrial management assistance; updating of advertising material; market studies; business appraisals; advertising; radio advertising; television advertising; marketing research; professional business consultancy; organization of exhibitions for commercial or advertising purposes; opinion polling; rental of advertising space; sales promotion for others; word processing; advertising by mail order; compilation of information into computer databases; systemization of information into computer databases; organization of trade fairs for commercial or advertising purposes; data search in computer files for others; rental of advertising time on communication media; news clipping services; rental of vending machines; price comparison services; presentation of goods on communication media, for retail purposes; business management and organization consultancy; business management consultancy; business organization consultancy; advisory services for business management; personnel management consultancy; arranging subscriptions to telecommunication services for others; administrative processing of purchase orders; commercial administration of the licensing of the goods and services of others; outsourcing services [business assistance]; invoicing; writing of publicity texts; compilation of statistics; sponsorship search; production of advertising films; business

management of sports people; marketing; telemarketing services; retail or wholesale services for pharmaceutical, veterinary and sanitary preparations and medical supplies; rental of sales stands; search engine optimization for sales promotion; website traffic optimization; pay per click advertising; commercial intermediation services; business management for freelance service providers; negotiation and conclusion of commercial transactions for third parties; updating and maintenance of data in computer databases; consultancy regarding public relations communication strategies; consultancy regarding advertising communication strategies; provision of an online marketplace for buyers and sellers of goods and services; outsourced administrative management for companies; cost analysis; market analysis; strategic business analysis; market analysis and research; analysis of advertising response and market research; providing advice relating to the analysis of consumer buying habits; cost price analysis regarding waste disposal, removal, handling and recycling; retail services relating to fruit; online retail services relating to cosmetics; computerized on-line ordering services; publication of publicity materials on-line; online retail store services relating to clothing; on-line ordering services in the field of restaurant take-out and delivery; retail services relating to delicatessen products; mail order retail services related to foodstuffs; mail order retail services related to non-alcoholic beverages; advertising services relating to the sale of goods; retail services relating to sporting goods.

Class 40 Air purification; water treating; fruit crushing; food and drink preservation; cryopreservation services; food smoking; custom assembling of materials for others; waste treatment [transformation]; refining services; production of energy; freezing of foods; rental of air-conditioning apparatus; rental of space heating apparatus; upcycling [waste recycling]; printing; offset printing; lithographic printing; silkscreen printing; welding services; treatment of waste materials.



Class 42 Chemical analysis; bacteriological research; chemistry services; chemical research; packaging design; land surveying; calibration [measuring]; graphic arts design; quality control; research and development of new products for others; styling [industrial design]; biological research; surveying; creating and maintaining websites for others; hosting computer sites [web sites]; rental of web servers; consultancy in the field of energy-saving; research in the field of environmental protection; providing scientific information, advice and consultancy relating to carbon offsetting; monitoring of computer systems by remote access; water analysis; scientific laboratory services; energy auditing; website design consultancy; scientific research; server hosting; technological consultancy; computer technology consultancy; quality audits; quality assessment; product quality testing; monitoring of water quality; quality checking and testing; product quality evaluation; inspection of goods for quality control; water quality control services; process monitoring for quality assurance; environmental testing; bacteriological analysis; biological analysis; biochemical analysis; industrial testing; scientific analysis; scientific research and analysis; laboratory testing; analytical laboratory services; analysis of product development; analysis of product design; analysis and evaluation of product design; analysis and evaluation of product development; laboratory analysis in the field of cosmetics; preparation of biological samples for analysis in research laboratories; preparation of biological samples for testing and analysis in research laboratories; conducting sampling and analysis services to assess pollution levels; testing, analysis and evaluation of the goods of others for the purpose of certification; testing, analysis and evaluation of the services of others for the purpose of certification; biological laboratory services; preparation of biological samples for research purposes; technical research in the field of carbon offsetting; technical project studies in the field of carbon offsetting.

Class 43 Food and drink catering; restaurant services; self-service restaurant services; bar services; café services; rental of transportable buildings;

rental of chairs, tables, table linen, glassware; rental of cooking apparatus; rental of drinking water dispensers; rental of lighting apparatus; food sculpting; cafeteria services; hotel services; reception services for temporary accommodation [management of arrivals and departures]; wine bar services; self-service cafeteria services; mobile restaurant services; business catering services; take-out restaurant services; food preparation services; catering services for schools; fast-food restaurant services; bar and restaurant services; catering services for company cafeterias; catering services for hospitality suites; take-away food and drink services; consultancy services relating to food preparation; providing food and drink catering services for exhibition facilities; providing food and drink catering services for convention facilities; providing food to needy persons [charitable services].