

**O/0380/23**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO. UK00003742456**

**BY CAFEA GMBH**

**TO REGISTER THE TRADE MARK:**

**PRETTEA**

**IN CLASSES 29, 30 AND 32**

**AND IN THE MATTER OF OPPOSITION THERETO**

**UNDER NO. 433138**

**BY PRET A MANGER (EUROPE) LIMITED**

## **BACKGROUND AND PLEADINGS**

1. On 12 January 2022, CAFEA GmbH (“the applicant”) applied to register the trade mark shown on the cover page of this decision in the UK. The application was published for opposition purposes on 4 February 2022 and registration is sought in relation to the goods shown in paragraph 18 below.

2. On 3 May 2022, Pret A Manger (Europe) Limited opposed the application based upon sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”). Under sections 5(2)(b) and 5(3), the opponent relies upon the following trade mark:

PRET

UKTM no. 3195778

Filing date 9 November 2016; registration date 27 January 2017

(“the First Earlier Mark”)

3. The opponent relies upon only those goods and services set out in the Annex 1 to this decision.

4. Under section 5(2)(b), the opponent claims that the marks are similar and that the goods and services are identical or similar, resulting in a likelihood of confusion.

5. Under section 5(3), the opponent claims a reputation in relation to those goods and services set out in Annex 1. The opponent submits that use of the application would, without due cause, take unfair advantage of, and/or be detrimental to, the distinctive character and/or reputation of the earlier mark.

6. Under section 5(4)(a) the opponent claims to have used the sign PRET throughout the UK since 1 January 1987 in relation to the goods and services set out in Annex 2 to this decision.

7. The applicant filed a counterstatement admitting that the parties’ respective goods and services are similar, but denying the grounds of opposition.

8. The applicant is represented by Murgitroyd & Company and the opponent is represented by Bird & Bird LLP.

9. Only the opponent filed evidence. Neither party requested a hearing and only the opponent filed written submissions in lieu. This decision is taken following a careful perusal of the papers.

## **EVIDENCE AND SUBMISSIONS**

10. The opponent filed evidence in the form of the witness statement of Panayioti Michael Andrew Christou dated 13 October 2022. Mr Christou is the Chief Executive Officer of the opponent. His evidence is accompanied by 13 exhibits.

11. The opponent also filed written submissions in lieu dated 1 February 2023.

12. I have taken the evidence and submissions into account in reaching my decision and will refer to them below where necessary.

## **RELEVANCE OF EU LAW**

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

## **DECISION**

### **Section 5(2)(b)**

14. 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.”

15. Section 5A of the Act is as follows:

“5A Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only.”

16. The trade mark upon which the opponent relies qualifies as an earlier trade mark pursuant to section 6 of the Act. As the earlier trade mark had not completed its registration process more than 5 years before the application date of the mark in issue, it is not subject to proof of use pursuant to section 6A of the Act. The opponent can, therefore, rely upon all of the goods and services identified.

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

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

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

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

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

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

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

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

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

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

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

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

### Comparison of goods and services

18. Although the applicant has admitted similarity between the parties' respective goods and services, it is still necessary to assess the extent of any similarity, as this will be relevant to the global assessment. The competing goods and services are as follows:

Opponent's goods and services	Applicant's goods
<p><u>Class 29</u> Meat, fish, seafood, poultry and game and preparations made from the aforesaid; sashimi; fillings for sandwiches; preparations for sandwiches; preserved, dried and cooked fruits and vegetables; prepared coconut; dried or desiccated coconut; processed coconut; coconut milk; coconut water; coconut chips; coconut bars; almond milk; pickles; olives (prepared); jellies, jams, fruits, preserves; eggs; milk and milk products; edible oils and fats; fruit salads; meat and vegetable extracts; prepared nuts; processed nuts; prepared meals; cooked meals; snacks; falafel; tofu; soya; dried or processed soya beans; soya milk;</p>	<p><u>Class 29</u> Coffee whiteners, milk mix beverages containing predominantly milk and/or milk powder, also with the addition of coffee and/or tea and/or cocoa and/or chocolate and/or malt and/or malt products and/or sweeteners and/or flavouring agents, all the aforementioned goods also as instant products or concentrate; calorie-reduced milk foodstuffs and milk mix beverages containing predominantly or half milk, also with the addition of cocoa and/or malt and/or chocolate, all the aforementioned goods also as instant products or concentrate, mixed milk beverages containing milk, also with the addition of milk products, also as instant</p>

soya yoghurt; beans; edible seeds; yoghurts; yoghurt drinks; salads; fruit chips, vegetable chips, soya chips; crisps; vegetable crisps; edible seaweed and snacks thereof; soups; miso soup; instant miso soup; soy bean products; fermented soy beans.

### Class 30

Coffee; tea; fruit infusions; herbal infusions; cocoa; sugar; cereals; porridge; cereal based bars; oat bars; corn based bars; granola bars; flour and preparations made from cereals; bread; pretzels; desserts; pastry; cakes; cake bars; buns; biscuits; pastries; cookies; muffins; croissants; gingerbread; couscous; processed quinoa; rice; tapioca; sago; chocolate; confectionery; chocolate based bars; chocolate coated bars; chocolate brownies; tortilla chips; rice crisps; wholewheat crisps; crisps made of cereals; rice cakes; chocolate coated rice cakes; corncakes; chocolate coated corn cakes; ices and ice creams; frozen yogurt; honey, treacle; salt; mustard; vinegar; sauces (condiments); wasabi; miso bean paste; miso [condiment]; processed herbs; salad dressings; spices; mayonnaise; pasta; pasties and pies; sandwiches; wrap sandwiches; puddings; sushi; tarts; prepared meals; cooked meals; snacks;

products or as concentrate energy drinks, also with added tea and/or flavouring agents, all goods also in instant form or as concentrate.

### Class 30

Coffee, coffee extracts, coffee surrogates, coffee substitutes, cereal coffee, chicory coffee, malt coffee as well as mixtures of these goods, all the aforementioned products also in instant form or as a concentrate; tea, tea extracts, coffee, tea, cocoa and chocolate drinks, also with the addition of milk and/or fruit products and/or malt and/or malt products and/or flavouring agents and/or sweeteners and/or fructose and/or glucose and/or caffeine and/or vitamins and/or minerals, all the aforementioned products also in instant form or as a concentrate; cocoa, chocolate; cocoa-containing beverages, chocolate, chocolate-containing beverages, chocolate and sugar products, in particular bars, also with the addition of milk products and/or fruit products and/or malt and/or malt products and/or honey and/or nuts and/or cereal products; fine bakery and confectionery products; natural sweeteners and sweetening agents; coffee, cocoa and chocolate preparations for the production of non-

popcorn; corn chips, rice chips, taco chips, chocolate beverages; confectionary bars; muesli, muesli desserts, muesli bars, snacks made from muesli; culinary herbs; cereal breakfast foods.

Class 31

Fresh fruit; raw fruit; fresh vegetables; raw vegetables; fresh herbs; raw herbs; coconuts; seeds; nuts; young fresh soybeans in the pod (eda-mame); fresh soy beans.

Class 32

Beers; mineral and aerated waters and other non-alcoholic drinks; fruit drinks and fruit juices; coconut milk [beverage]; syrups and other preparations for making beverages; vegetable drinks and vegetable juices.

Class 43

Providing of food and drink; self-service restaurants; restaurants; cafés; cafeterias, canteens; catering services; catering services provided online from a computer database or from the Internet; information relating to food, drink and catering services provided online from a computer database or from the Internet.

alcoholic beverages; mixed beverages mainly consisting of tea, tea drinks, herbal and fruit tea drinks, all products also in instant form.

Class 32

Non-alcoholic beverages; non-alcoholic beverages with the addition of coffee and/or tea and/or cocoa and/or chocolate and/or fruit and/or milk products and/or malt and/or malt products, all goods also in instant form or as concentrate; vitalizing drinks with added natural caffeine-containing plant products and also in instant form or as concentrate (except for medical purposes), vitamins and/or minerals and/or caffeine, also with added natural caffeine-containing plant products and also in instant form or concentrate (except for medical purposes); Mineral water, non-alcoholic beverages with the addition of tea, milk products and/or honey, all aforementioned goods also as an instant product or concentrate, mixed drinks mainly consisting of tea, tea drinks, herbal and fruit tea drinks, all products also in instant form.



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

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

20. 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.

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

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

### Class 29

*Coffee whiteners; milk mix beverages containing predominantly milk and/or milk powder, also with the addition of coffee and/or tea and/or cocoa and/or chocolate and/or malt and/or malt products and/or sweeteners and/or flavouring agents, all the aforementioned goods also as instant products or concentrate; calorie-reduced milk foodstuffs and milk mix beverages containing predominantly or half milk, also with the addition of cocoa and/or malt and/or chocolate, all the aforementioned goods also as instant products or concentrate, mixed milk beverages containing milk, also with the addition of milk products, also as instant products or as concentrate energy drinks, also with added tea and/or flavouring agents, all goods also in instant form or as concentrate.*

22. These goods are all identical on the principle outlined in *Meric* to “milk and milk products” in the opponent’s specification.

### Class 30

*Coffee, coffee extracts, all the aforementioned products also in instant form or as a concentrate; tea, tea extracts, coffee, tea, cocoa and chocolate drinks, also with the addition of milk and/or fruit products and/or malt and/or malt products and/or flavouring agents and/or sweeteners and/or fructose and/or glucose and/or caffeine and/or vitamins and/or minerals, all the aforementioned products also in instant form or as a concentrate; cocoa, chocolate; cocoa-containing beverages, chocolate, chocolate-containing beverages, mixed beverages mainly consisting of tea, tea drinks, herbal and fruit tea drinks, all products also in instant form.*

23. In my view, these are all either self-evidently identical or identical on the principle outlined in *Meric* to “coffee”, “tea” and “cocoa” in the opponent’s specification. If I am wrong in this finding, then there will be a clear overlap in trade channels, user, nature, purpose and method of use. The goods will also be in competition. Consequently, they will be highly similar.

*Coffee surrogates, coffee substitutes, cereal coffee, chicory coffee, malt coffee as well as mixtures of these goods, all the aforementioned products also in instant form or as a concentrate;*

24. These goods all appear to be coffee substitutes. In my view, these will overlap in nature with “coffee” only to the extent that all take the form of liquid beverages. Otherwise, they are made in different ways and of different substances. The method of use is likely to overlap as will the purpose (being to quench thirst). The users will overlap. There may be some overlap in trade channels. Clearly, these goods will be in competition. Consequently, I consider them to be similar to between a medium and high degree.

*Chocolate and sugar products, in particular bars, also with the addition of milk products and/or fruit products and/or malt and/or malt products and/or honey and/or nuts and/or cereal products;*

25. These goods are identical on the principle outlined in *Meric* to “confectionery” and “chocolate based bars” in the opponent’s specification.

*Fine bakery and confectionery products;*

26. These goods are self-evidently identical or identical on the principle outlined in *Meric* to “confectionery”, “pastries” and “croissants” in the opponent’s specification.

*Natural sweeteners and sweetening agents;*

27. These goods are identical on the principle outlined in *Meric* to “honey” and “sugar” in the opponent’s specification.

*Coffee, cocoa and chocolate preparations for the production of non-alcoholic beverages;*

28. These are preparations used to make coffee/cocoa/chocolate-based beverages. In my view, these terms could include, for example, instant coffee/cocoa/hot chocolate sachets which could be mixed with hot water to make a beverage. To that extent, I consider them to be identical with the terms “coffee” and “cocoa”. However, even if they are not identical, they would be sold through the same trade channels and to the same users. The nature would overlap, as would the purpose. There would be competition. Consequently, I consider these goods to be highly similar.

### Class 32

*Non-alcoholic beverages; non-alcoholic beverages with the addition of coffee and/or tea and/or cocoa and/or chocolate and/or fruit and/or milk products and/or malt and/or malt products, all goods also in instant form or as concentrate; vitalizing drinks with added natural caffeine-containing plant products and also in instant form or as concentrate (except for medical purposes), vitamins and/or minerals and/or caffeine, also with added natural caffeine-containing plant products and also in instant form or concentrate (except for medical purposes); Mineral water, non-alcoholic beverages with the addition of tea, milk products and/or honey, all aforementioned goods also as an instant product or concentrate, mixed drinks mainly consisting of tea, tea drinks, herbal and fruit tea drinks, all products also in instant form.*

29. These goods are all self-evidently identical or identical on the principle outlined in *Meric* to “mineral and aerated waters and other non-alcoholic drinks” in the opponent’s specification.

## Comparison with cafés/restaurants

30. For reasons that will become clear later in my decision, I will also consider how similar the applicant's goods are to café/restaurant (including takeaway) services. Clearly, all of the applicant's goods are such that they could be sold through restaurants/cafés. There is, therefore, potential for there to be an overlap in trade channels. Clearly, there will be an overlap in user. The nature, method of use and purpose of the goods and services differ. The goods and services are complementary.<sup>1</sup> In my view, they are similar to a medium degree.

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

31. As the above case law indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods and services. I must then determine the manner in which the goods and services 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 (as he then was) 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.”

32. The average consumer for the parties' goods will be a member of the general public or a business user, purchasing the goods for sale through their restaurant/bar establishment. The average consumer for the services will be a member of the general

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<sup>11</sup> *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06

public. The cost of the goods is likely to be relatively low and they are likely to be reasonably frequent purchases. The consumer will still take factors into account such as flavour and origin. The services are likely to attract a higher (but not high) cost and will be less frequent purchases than the goods. Consequently, I consider that between a low and medium degree of attention will be paid during the purchasing process for the goods and a medium degree of attention will be paid for the services.

33. The goods and services are likely to be selected following perusal of physical signage or online equivalents. Consequently, visual considerations are likely to dominate the selection process. However, I do not discount that aural components may play a part as word-of-mouth recommendations may be made.

### **Comparison of trade marks**

34. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The Court of Justice of the European Union (“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.”

35. 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.

36. The respective trade marks are shown below:

Opponent's trade mark	Applicant's trade mark
PRET	PRETTEA

37. The opponent's mark consists of the word PRET. There are no other elements to contribute to the overall impression, which lies in the word itself. The applicant's mark consists of the word PRETTEA. There are no other elements to contribute to the overall impression, which lies in the word itself.

38. Visually, the entirety of the opponent's mark appears as the first four letters of the applicant's mark. The last three letters of the applicant's mark, which are absent from the opponent's mark act as a point of visual difference. I consider the marks to be visually similar to a medium degree.

39. Aurally, the opponent's mark will be pronounced identically to the first syllable of the applicant's mark. The second syllable of the applicant's mark is likely to be pronounced TEE. However the second syllable is pronounced, it represents a point of aural difference. I consider the marks to be aurally similar to a medium degree.

40. Conceptually, the word PRET is not likely to convey any meaning for the average consumer. I note that the applicant submits that, in French, the word PRET means 'ready'. However, I have no evidence to suggest that this meaning will be understood by a significant proportion of average consumer, nor do I consider this likely to be the case. In any event, there will undoubtedly be a significant proportion of average consumers who do not understand that meaning. The applicant submits that its mark will be viewed as a misspelling of the word PRETTY. I accept that that may be the case for some average consumers and, if so, it will be attributed the ordinary English meaning of that word. However, it may also be viewed as an invented word. Some average consumers who view it as an invented word will either attribute no meaning

at all to it, or may identify that it includes the dictionary word TEA. The marks will be conceptually neutral or dissimilar, depending upon how the marks are interpreted.

### **Distinctive character of the earlier trade mark**

41. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the CJEU stated that:

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-2779, paragraph 49).

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

42. 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. The distinctive character of a mark can be enhanced by virtue of the use that has been made of it.



43. I will begin by assessing the inherent distinctive character of the mark. The earlier mark consists of the word PRET. This will be seen as an invented or foreign language word, with no particular meaning. In my view, it is highly distinctive.

44. I note the following from the opponent's evidence:

- a) The opponent opened its first store in London in 1986 and now has almost 400 stores in the UK;
- b) Since January 2003, a number of the opponent's outlets have been branded as PRET, rather than using the full title PRET A MANGER.
- c) Through its stores, the opponent sells a range of hot and cold beverages, as well as a variety of sandwiches, salads, baguettes and wraps, soups, sushi, desserts, pastries and snacks.
- d) The majority of the opponent's custom is based on food/drink being bought to take away, although most stores also have facilities for eating-in.
- e) The word PRET appears on goods sold by the opponent. The following examples are provided, although I note that they are undated:<sup>2</sup>



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<sup>2</sup> Exhibit PC6



f) Mr Christou provides the following numbers for visits to [www.pret.co.uk](http://www.pret.co.uk) between 2017 and 2021:

Year	Average Monthly Visits
2017	353,770
2018	346,997
2019	590,500
2020	477,373
2021	598,648

g) Mr Christou provides the following UK turnover figures for the opponent:<sup>3</sup>

Year	Turnover (£)
2012	360 million
2013	404 million
2014	470 million
2015	521 million
2016	575 million
2017	637 million
2018	710 million
2019	708 million
2020	299 million
2021	372 million

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<sup>3</sup> Exhibit PC8

- h) Mr Christou provides the following UK turnover figures for all hot and cold beverages, including those containing tea, sold from the opponent's stores:

<b>Year</b>	<b>Turnover (£)</b>
2017	188.7 million
2018	210.5 million
2019	212 million
2020	90 million
2021	104 million

- i) Mr Christou also provides UK turnover figures for sales of hot and cold beverages, specifically containing tea:<sup>4</sup>

<b>Year</b>	<b>Turnover (£)</b>
2017	16.4 million
2018	18.1 million
2019	20.8 million
2020	8.4 million
2021	9.5 million

- j) By 2017, the opponent was "serving 1.4million coffees a day, and before the pandemic, Pret had just over 400 shops in the UK, 300 of which were in London".<sup>5</sup>

- k) Mr Christou provides the following information about marketing expenditure in the UK:

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<sup>4</sup> Exhibit PC9

<sup>55</sup> Exhibit PC11

Year	Approximate Spend (£)
2006	800,000
2007	950,000
2008	1.1 Million
2009	1.1 Million
2010	1.1 Million
2011	1.1 Million
2012	1.6 Million
2013	2.1 Million
2014	2.6 Million
2017	1.7 million
2018	1.7 million
2019	1.7 million
2020	1.7 million
2021	1.9 million

- l) On 4 January 2022, the opponent had over 250,000 Facebook likes, 240,000 Instagram followers and over 110,000 Twitter followers. There is, of course, no breakdown as to what proportion of these would have been UK customers.
- m) In September 2021, the opponent launched a subscription service, allowing customers to enjoy up to five Barista-made drinks (teas, organic coffees, frappes, hot chocolates etc) for a monthly subscription fee. The service received 20,930 subscriptions on the day of the launch.
- n) In November 2021, the opponent launched a loyalty programme called Pret Perks, allowing customers to collect stars which they can use to redeem rewards.
- o) A report from 2014 shows that the opponent was the second largest sandwich/bakery bar in the UK, by number of outlets.<sup>6</sup>

45. The opponent has demonstrated significant turnover figures for food and beverages services. There are also clearly significant turnover figures for hot and cold beverages. Further, I note that the opponent has spent a considerable amount on

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<sup>6</sup> Exhibit PC11

advertising on a consistent basis. I note that there is likely to be a wide geographical spread given the number of outlets in the UK (although I recognise that most are in London). Whilst I do not have market share figures, the opponent's turnover figures represent, in my view, a substantial business. Taking the evidence as a whole into account, I am satisfied that the earlier mark has been enhanced through use to a very high degree for restaurant/café (including takeaway) services and hot and cold beverages, including tea and those containing tea.

### **Likelihood of confusion**

46. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between them down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the earlier 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 he has retained in his mind.

47. I have found as follows:

- a) The goods and services vary from being similar to a medium degree to identical.
- b) The average consumer will be either members of the general public or businesses in the food and beverage sector, who will pay between a low and medium degree of attention (for the goods) or a medium degree of attention (for the services).

- c) The purchasing process will be predominantly visual, although I do not discount an aural component.
- d) The marks are visually and aurally similar to a medium degree, and conceptually neutral or dissimilar, depending upon how the marks are perceived.
- e) The earlier mark is highly distinctive inherently, which has been enhanced to a very high degree through use for café/restaurant (including takeaway) services and hot and cold beverages.

48. The enhanced distinctive character of the earlier mark is clearly a factor in favour of the opponent. However, notwithstanding this and the similarity of the goods, I do not consider that the average consumer will mistakenly recall or misremember the marks as each other. I do not consider there to be a likelihood of direct confusion.

49. I will now consider whether there is indirect confusion. In *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, Mr Iain Purvis Q.C., as the Appointed Person, explained that:

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

17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

- (a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right ('26 RED TESCO' would no doubt be such a case).
- (b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as 'LITE', 'EXPRESS', 'WORLDWIDE', 'MINI' etc.).
- (c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension ('FAT FACE' to 'BRAT FACE' for example)".

50. These examples are, clearly, not intended to be an exhaustive list but illustrate some of the circumstances in which indirect confusion may arise. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor KC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at [16] that "a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion". Arnold LJ agreed, pointing out that there must be a "proper basis" for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

51. For those goods that are tea or contain tea, I recognise that there is likely to be a significant proportion of average consumers, particularly those who are familiar with the opponent's brand (bearing in mind the very high degree of enhanced distinctiveness), who would identify the applicant's mark as containing the words PRET and TEA. For those consumers, the applicant's mark is likely to fall into the

second of the categories identified in *LA Sugar* i.e. a non-distinctive, descriptive addition which will be seen as indicating a sub-brand. Clearly for the applicant's goods which are (or contain) tea, the addition of the letters TEA to the end of the opponent's mark will simply be seen as indicating a new brand of tea-related products sold by the opponent. For the remaining goods in the applicant's specification, which are goods likely to be sold alongside tea (and tea-based goods), I consider that there is still potential for the average consumer to identify this as a sub-brand. The average consumer will conclude that either the additional word TEA remains non-distinctive (perhaps indicating a range of goods likely to be sold through teashops) or that the applicant's mark contains an element which is so strikingly distinctive (both inherently and as a result of the use made of it), that the average consumer would believe that only one undertaking could be using it in relation to such similar goods and services. Consequently, I consider there to be a likelihood of indirect confusion.

52. The opposition based upon section 5(2)(b) succeeds.

### **Section 5(3)**

53. Section 5(3) of the Act states:

“5(3) A trade mark which -

(a) is identical with or similar to an earlier trade mark, [...] shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or repute of the earlier trade mark.”

54. Section 5(3A) of the Act states:

“Subsection (3) applies irrespective of whether the goods and services for which the trade mark is to be registered are identical with, similar to or not similar to those for which the earlier trade mark is protected.”



55. The relevant case law can be found in the following judgments of the CJEU: *Case C-375/97, General Motors, Case 252/07, Intel, Case C-408/01, Adidas-Salomon, Case C-487/07, L'Oreal v Bellure and Case C-323/09, Marks and Spencer v Interflora and Case C383/12P, Environmental Manufacturing LLP v OHIM*. The law appears to be as follows.

(a) The reputation of a trade mark must be established in relation to the relevant section of the public as regards the goods or services for which the mark is registered; *General Motors, paragraph 24*.

(b) The trade mark for which protection is sought must be known by a significant part of that relevant public; *General Motors, paragraph 26*.

(c) It is necessary for the public when confronted with the later mark to make a link with the earlier reputed mark, which is the case where the public calls the earlier mark to mind; *Adidas Saloman, paragraph 29 and Intel, paragraph 63*.

(d) Whether such a link exists must be assessed globally taking account of all relevant factors, including the degree of similarity between the respective marks and between the goods/services, the extent of the overlap between the relevant consumers for those goods/services, and the strength of the earlier mark's reputation and distinctiveness; *Intel, paragraph 42*

(e) Where a link is established, the owner of the earlier mark must also establish the existence of one or more of the types of injury set out in the section, or there is a serious likelihood that such an injury will occur in the future; *Intel, paragraph 68*; whether this is the case must also be assessed globally, taking account of all relevant factors; *Intel, paragraph 79*.

(f) Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark, and requires evidence of a change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious risk that

this will happen in future; *Intel, paragraphs 76 and 77 and Environmental Manufacturing, paragraph 34.*

(g) The more unique the earlier mark appears, the greater the likelihood that the use of a later identical or similar mark will be detrimental to its distinctive character; *Intel, paragraph 74.*

(h) Detriment to the reputation of the earlier mark is caused when goods or services for which the later mark is used may be perceived by the public in such a way that the power of attraction of the earlier mark is reduced, and occurs particularly where the goods or services offered under the later mark have a characteristic or quality which is liable to have a negative impact of the earlier mark; *L'Oreal v Bellure NV, paragraph 40.*

(i) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the proprietor of the mark in order to create and maintain the mark's image. This covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation (*Marks and Spencer v Interflora, paragraph 74 and the court's answer to question 1 in L'Oreal v Bellure*).

56. The conditions of section 5(3) are cumulative. Firstly, the opponent must show that the earlier mark and the applicant's mark are similar. Secondly, the opponent must show that the earlier mark has achieved a level of knowledge/reputation amongst a significant part of the public. Thirdly, it must be established that the level of reputation and the similarities between the marks will cause the public to make a link between them in the sense of the earlier mark being brought to mind by the later mark. Finally, assuming the first three conditions have been met, section 5(3) requires that one or more of the types of damage will occur. It is unnecessary for the purposes of section

5(3) that the goods and services be similar, although the relative distance between them is one of the factors which must be assessed in deciding whether the public will make a link between the marks.

## **Reputation**

57. In *General Motors*, Case C-375/97, the CJEU held that:

“25. It cannot be inferred from either the letter or the spirit of Article 5(2) of the Directive that the trade mark must be known by a given percentage of the public so defined.

26. The degree of knowledge required must be considered to be reached when the earlier mark is known by a significant part of the public concerned by the products or services covered by that trade mark.

27. In examining whether this condition is fulfilled, the national court must take into consideration all the relevant facts of the case, in particular the market share held by the trade mark, the intensity, geographical extent and duration of its use, and the size of the investment made by the undertaking in promoting it.

28. Territorially, the condition is fulfilled when, in the terms of Article 5(2) of the Directive, the trade mark has a reputation 'in the Member State'. In the absence of any definition of the Community provision in this respect, a trade mark cannot be required to have a reputation 'throughout' the territory of the Member State. It is sufficient for it to exist in a substantial part of it.”

58. In determining whether the opponent has demonstrated a reputation for the goods and services relied upon, it is necessary for me to consider whether its marks will be known by a significant part of the public concerned with those goods and services. In reaching this decision, I must take all of the evidence into account including “the market share held by the trade mark, the intensity, geographical extent and duration of use, and the size of the investment made by the undertaking in promoting it”.

59. I have already summarised the opponent's evidence of use above. In my view, the evidence demonstrates a very strong reputation for café/restaurant (including takeaway) services and hot and cold beverages, including tea and those containing tea.

## **Link**

60. As I noted above, my assessment of whether the public will make the required mental 'link' between the marks must take account of all relevant factors. The factors identified in *Intel* are:

### The degree of similarity between the conflicting marks

I have found the marks to be visually and aurally similar to a medium degree. They are conceptually neutral, or conceptually dissimilar depending upon how the marks are perceived.

### The nature of the goods or services for which the conflicting marks are registered, or proposed to be registered, including the degree of closeness or dissimilarity between those goods or services, and the relevant section of the public

As set out in my discussion of the section 5(2)(b) ground above, some of the goods in the applicant's specification are similar or identical to the goods for which the opponent has a reputation. Further, all of the goods in the applicant's specification will be similar to a medium degree to the services for which the opponent has a reputation.

### The strength of the earlier mark's reputation

The earlier mark has a very strong reputation for the goods and services.

### The degree of the earlier mark's distinctive character, whether inherent or acquired through use

The earlier mark is inherently distinctive to a high degree, which has been enhanced through use to a very high degree.

Whether there is a likelihood of confusion

I have found there to be a likelihood of indirect confusion.

61. Taking all of the above factors into account, particularly the strength of the opponent's reputation and the fact that the additional letters TEA in the application are likely to be viewed by a significant part of the relevant public as identifying tea-based goods or goods sold through teashops, a link will be made.

**Damage**

62. I must now consider whether any of the types of damage pleaded will arise.

63. The opponent states as follows in the Form TM7:

"18. As a result of the close similarity between the Applicant's mark and the Opponent's mark, and the existence of a clear link between the Applicant's goods and the goods/services for which the Opponent's earlier mark has a reputation, it is clear that an unfair advantage could be taken. Furthermore, there is clear risk of damage to the Opponent's company through a considerable decrease in sales, a loss of clientele, or a decline in the degree of recognition of the Opponent's mark among the public.

19. Due to the high similarity between the Applicant's and Opponent's marks, it is likely that consumers would believe that goods sold under the PRETTEA mark were provided by, or otherwise affiliated with, the Opponent. As a result, the Applicant would benefit from diverted and/or increased sales due to their products being confused or incorrectly associated with the Opponent's well-known Trade Marks and the products sold, and services provided, thereunder. The Applicant's use of the mark PRETTEA would therefore undoubtedly

take/be capable of taking an unfair advantage of the Opponent's earlier mark, and/or be detrimental to the repute or the distinctiveness of their earlier mark.

20. The Applicant is attempting to benefit from the attractiveness of the Opponent's earlier mark by affixing on its goods a sign, that is very closely similar to the Opponent's PRET mark, which is widely known on the market, thus misappropriating its attractive powers and advertising value. The registration of the contested mark would constitute detriment because of the links between the marks and the goods/services in minds of consumers of the contested products. Relevant consumers would assume that the Applicant's Trade Mark is another Trade Mark originating from the same undertaking as the earlier mark, particularly in view of the reputation of the Opponent's mark and the fact that the Opponent's PRET mark is wholly incorporated within the Applicant's mark, and the Applicant's mark, as a whole, is very closely similar to the Opponent's PRET mark. The Applicant would therefore benefit in an even greater measure from the sale of their products, disproportionate in comparison to the amount of promotional investment made by the Opponent. Granting the contested mark for the goods at issue would clearly give the Applicant the ability to take unfair advantage of the distinctiveness of the Opponent's earlier mark and to unacceptably benefit from the remarkable goodwill associated with that mark. This is a classic occurrence of "free-riding" on an established mark's reputation."

64. I bear in mind that unfair advantage has no effect on the consumers of the earlier mark's goods and services. Instead, the taking of unfair advantage of the distinctive character or reputation of an earlier mark means that consumers are more likely to buy the goods of the later mark than they would otherwise have been if they had not been reminded of the earlier mark.

65. In *Jack Wills Limited v House of Fraser (Stores) Limited* [2014] EWHC 110 (Ch) Arnold J. considered the earlier case law and concluded that:

"80. The arguments in the present case give rise to two questions with regard to taking unfair advantage. The first concerns the relevance of the defendant's

intention. It is clear both from the wording of Article 5(2) of the Directive and Article 9(1)(c) of the Regulation and from the case law of the Court of Justice interpreting these provisions that this aspect of the legislation is directed at a particular form of unfair competition. It is also clear from the case law both of the Court of Justice and of the Court of Appeal that the defendant's conduct is most likely to be regarded as unfair where he intends to benefit from the reputation and goodwill of the trade mark. In my judgment, however, there is nothing in the case law to preclude the court from concluding in an appropriate case that the use of a sign the objective effect of which is to enable the defendant to benefit from the reputation and goodwill of the trade mark amounts to unfair advantage even if it is not proved that the defendant subjectively intended to exploit that reputation and goodwill.”

66. To the extent that the relevant public believe that the goods of the applicant originate from the opponent, there will clearly be unfair advantage. However, even if they do not consider that the goods originate from the same undertaking, I consider that the applicant will still gain an unfair advantage. I note that there are references in publications which refer to the opponent as providing “extraordinary convenience” and being focused upon “freshness”.<sup>7</sup> In my view, there is clear potential for this image to transfer to the applicant. Consequently, I consider that damage is made out.

67. As damage is made out on the basis of unfair advantage, I do not consider it necessary to consider the other heads of damage.

68. The opposition based upon section 5(3) succeeds.

### **Section 5(4)(a)**

69. Section 5(4)(a) of the Act states as follows:

“5(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented -

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<sup>77</sup> Exhibit PC11

a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, where the condition in subsection (4A) is met,

aa)...

b) ...

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of “an earlier right” in relation to the trade mark”.

70. Subsection (4A) of section 5 of the Act states:

“(4A) The condition mentioned in subsection (4)(a) is that the rights to the unregistered trade mark or other sign were acquired prior to the date of application for registration of the trade mark or date of the priority claimed for that application.”

71. I can deal with this ground relatively swiftly. The opponent’s evidence clearly demonstrates a very strong degree of goodwill in relation to café/restaurant (including takeaway) services and hot and cold beverages. These goods and services are in the same (or similar) fields of activity as the applicant’s goods. Given the similarity between the marks, the overlapping fields of activity and the strength of the opponent’s goodwill, I am satisfied that a substantial number of members of the public will be misled into thinking that the goods of the applicant are the goods of the opponent. Damage through diversion of sales is easily foreseeable.

72. The opposition based upon section 5(4)(a) succeeds.

## **CONCLUSION**

73. The opposition is successful, and the application is refused.



## **COSTS**

74. The opponent has been successful and is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 2/2016. In the circumstances, I award the opponent the sum of **£2,200**, calculated as follows:

Preparing a Notice of opposition and considering the applicant's counterstatement	£400
Preparing evidence	£1,200
Written submissions	£400
Official fee	£200
<b>Total</b>	<b>£2,200</b>

75. I therefore order CAFEA GmbH to pay Pret A Manger (Europe) Limited the sum of £2,200. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

**Dated this 24<sup>th</sup> day of April 2023**

**S WILSON**

**For the Registrar**

## ANNEX 1

Under sections 5(2)(b) and 5(3) the opponent relies on the following goods and services:

### Class 29

Meat, fish, seafood, poultry and game and preparations made from the aforesaid; sashimi; fillings for sandwiches; preparations for sandwiches; preserved, dried and cooked fruits and vegetables; prepared coconut; dried or desiccated coconut; processed coconut; coconut milk; coconut water; coconut chips; coconut bars; almond milk; pickles; olives (prepared); jellies, jams, fruits, preserves; eggs; milk and milk products; edible oils and fats; fruit salads; meat and vegetable extracts; prepared nuts; processed nuts; prepared meals; cooked meals; snacks; falafel; tofu; soya; dried or processed soya beans; soya milk; soya yoghurt; beans; edible seeds; yoghurts; yoghurt drinks; salads; fruit chips, vegetable chips, soya chips; crisps; vegetable crisps; edible seaweed and snacks thereof; soups; miso soup; instant miso soup; soy bean products; fermented soy beans.

### Class 30

Coffee; tea; fruit infusions; herbal infusions; cocoa; sugar; cereals; porridge; cereal based bars; oat bars; corn based bars; granola bars; flour and preparations made from cereals; bread; pretzels; desserts; pastry; cakes; cake bars; buns; biscuits; pastries; cookies; muffins; croissants; gingerbread; couscous; processed quinoa; rice; tapioca; sago; chocolate; confectionery; chocolate based bars; chocolate coated bars; chocolate brownies; tortilla chips; rice crisps; wholewheat crisps; crisps made of cereals; rice cakes; chocolate coated rice cakes; corncakes; chocolate coated corn cakes; ices and ice creams; frozen yogurt; honey, treacle; salt; mustard; vinegar; sauces (condiments); wasabi; miso bean paste; miso [condiment]; processed herbs; salad dressings; spices; mayonnaise; pasta; pasties and pies; sandwiches; wrap sandwiches; puddings; sushi; tarts; prepared meals; cooked meals; snacks; popcorn; corn chips, rice chips, taco chips, chocolate beverages; confectionary bars; muesli, muesli desserts, muesli bars, snacks made from muesli; culinary herbs; cereal breakfast foods.

### Class 31

Fresh fruit; raw fruit; fresh vegetables; raw vegetables; fresh herbs; raw herbs; coconuts; seeds; nuts; young fresh soybeans in the pod (eda-mame); fresh soy beans.

### Class 32

Beers; mineral and aerated waters and other non-alcoholic drinks; fruit drinks and fruit juices; coconut milk [beverage]; syrups and other preparations for making beverages; vegetable drinks and vegetable juices.

### Class 43

Providing of food and drink; self-service restaurants; restaurants; cafés; cafeterias, canteens; catering services; catering services provided online from a computer database or from the Internet; information relating to food, drink and catering services provided online from a computer database or from the Internet.

## ANNEX 2

Under section 5(4)(a) the opponent relies on the following goods and services:

### Class 29

Meat, fish, poultry and game and preparations made from the aforesaid; sashimi; fillings for sandwiches; preparations for sandwiches; preserved, dried and cooked fruits and vegetables, prepared coconut; dried or desiccated coconut; processed coconut; coconut milk; coconut water; coconut chips; coconut bars; almond milk; pickles; olives (prepared); jellies, jams, fruits, preserves; eggs; milk and milk products; fruit salads; meat and vegetable extracts; prepared nuts; processed nuts; prepared meals; cooked meals; snacks; falafel; tofu; soya; processed soya beans; soya milk; soya yoghurt; beans; edible seeds; yoghurts; yoghurt drinks; salads; fruit chips, vegetable chips, crisps; vegetable crisps; soups; miso soup; instant miso soup; soy bean products.

### Class 30

Coffee; tea; fruit infusions; herbal infusions; cocoa; sugar; cereals; porridge; granola; chocolate granola; cereal based bars; oat bars; corn based bars; granola bards; flour and preparations made from cereals; bread; desserts; frozen desserts; pastry; cakes; cake slices; frozen cakes; cake bars; egg tarts; buns; biscuits; pastries; Danish pastries; chocolate pastries; frozen pastries; cookies; muffins; croissants; vegan croissants; all butter croissants; chocolate croissants; almost croissants; frozen croissants; pain au raisin; gingerbread; couscous; processed quinoa; rice; chocolate; confectionery; chocolate based bars; chocolate coated bars; chocolate brownies; tortilla chips; rice crisps; wholewheat crisps; crisps made of cereals; rice cakes; chocolate coated rice cakes; corncakes; chocolate coasted corn cakes; sauces (condiments); miso bean paste; miso [condiment]; processed herbs; salad dressings; spices; mayonnaise; pasta; pasties; sandwiches; wrap sandwiches; puddings; sushi; tarts; prepared meals; cooked meals; snacks; popcorn; corn chips; taco chips; chocolate beverages; confectionery bars; muesli; bircher muesli; muesli desserts; muesli bars; snacks made from muesli; culinary herbs; cereal breakfast foods.

### Class 31

Fresh fruit; raw fruit; fresh vegetables; raw vegetables; fresh herbs; raw herbs; seeds; nuts; young fresh soybeans in the pod (eda-mame); fresh soy beans.

### Class 32

Mineral and aerated waters and other non-alcoholic drinks; fruit drinks and fruit juices; coconut milk [beverages]; syrups and other preparations for making beverages; vegetable drinks and vegetable juices.

### Class 43

Providing of food and drink; self-service restaurants; restaurants; cafes; cafeterias; catering services; catering services provided online from a computer database or from the Internet; information relating to food, drink and catering services provided online from a computer database or from the Internet.