O/0280/26

TRADE MARKS ACT 1994

IN THE MATTER OF

TRADE MARK APPLICATION NO. 4092467

IN THE NAME OF

LILY AND BRIDGE CORPORATION

TO REGISTER THE FOLLOWING TRADE MARK:

IN CLASSES 29 & 30

AND

OPPOSITION THERETO (UNDER NO. 451109)

BY

VANTOM CONSULTANCY LTD

BACKGROUND

1) On 27 August 2024, ('the applicant') applied to register the trade mark shown on the cover page of this decision in the UK in respect of the following goods:

Class 29: Meat; Poultry, not live; Edible oil; Edible oils and fats; Seafood, not live; Fish, not live; Frozen fruits; Frozen vegetables; Jams; Lentils; Frozen prepared meals consisting principally of vegetables; Banana chips; Prepared meals consisting primarily of meat; Prepared meals consisting primarily of poultry; Prepared meals consisting primarily of fish; Prepared meals consisting principally of vegetables.

Class 30: Naan bread; Biscuits; Cakes; Chutney; Cocoa; Coffee; Flour; Honey; Relish [condiment]; Rice; Salt; Spices; Sugar; Tea; Vinegar; Curry powder; Curry spices; Rice flour; Samosas; Chocolate confections; Frozen confections; Processed cererals; Processed grains; Seasonings.

2) The application was published in the Trade Marks Journal on 13 September 2024 and notice of opposition was later filed by VANTOM CONSULTANCY LTD ('the opponent'). The opponent claims that the trade mark application offends under section 5(2)(b) of the Trade Marks Act 1994 ('the Act'). The following marks, and goods covered by the same, are relied upon:

- **UKTM 4044562**

Class 29: Milk drinks.
Class 30: Coffee based drinks.

Filing date: 26 April 2024
Date of entry in register: 19 July 2024

- **UKTM 3115054**

Class 29: Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs, milk and milk products; edible oils and fats; prepared meals; soups and potato crisps.

Class 30: Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, edible ices; honey, treacle; yeast, baking-powder; salt, mustard; vinegar, sauces (condiments); spices; ice; sandwiches; prepared meals; pizzas, pies and pasta dishes.

Filing date: 25 June 2015
Date of entry in register: 04 December 2015

- **UKTM 4035450**

KAYAL

Class 29: Meat, fish, poultry and game; milk, cheese, butter, yogurt and other milk products; fish-based food; meat; meat-based food; meat extracts; preserved, frozen, dried and cooked fruits and vegetables; vegetable-based food; fruit-based food; eggs; processed eggs; jellies, jams, compotes; preserved fish; preserved meat; pickles; pickled fish; oils and fats for food;

pickled fish; edible oils and fats, preserves and pickles; prepared meals consisting primarily of fish or meat or poultry or vegetables.

Class 30: Coffee, tea, cocoa and substitutes therefor; bread, pastries and confectionery; chocolate; ice cream, sorbets and other edible ices; cereal breakfast foods; preparations made from cereals; tapioca and sago; tapioca for food; rice, pasta and noodles; flour and preparations made from cereals; vegetable flour; salt, seasonings, spices, preserved herbs; flavouring blends of herbs, salt and spices; rice bread; bread flour; bread dough; sugar, honey, treacle; sugar confectionery; sauces [condiments]; breakfast cereals; processed cereals; ready-to-eat cereals; bread; bread biscuits; sweets; organic spices; spices in the form of powders; masala powder and spices; sauces; organic spices; spices in the form of powders; masala powder and spices; vinegar, sauces and other condiments; ice [frozen water]; dessert puddings and souffles; ice cream desserts; prepared meals consisting primarily of rice or pasta; chocolate products; pastries, cakes, tarts and biscuits (cookies); snack foods consisting principally of confectionery; puddings; sandwiches; hamburgers [sandwiches].

Filing date: 05 April 2024
Date of entry in register: 05 July 2024

3) It is claimed that the respective goods are either identical or highly similar and that the respective marks are similar, such that there exists a likelihood of confusion under section 5(2)(b) of the Act.

4) The trade marks relied upon by the opponent are earlier marks, in accordance with section 6 of the Act. As only UKTM 3115054 completed its registration procedure more than five years prior to the application date of the contested mark; it is only that earlier mark which is subject to the proof of use conditions, as per section 6A of the Act. The opponent made a statement of use for all goods relied upon under that mark.

5) The applicant filed a counterstatement denying the opponent’s claims and requesting proof of use for the relevant earlier mark.

6) The opponent is represented by Abel & Imray LLP. The applicant is represented by Trademarkit LLP. Both parties filed evidence. The opponent's evidence in chief comes in the form of a witness statement from Matthew Peter Smith[1] with Exhibits MPS1 – MPS7. The applicant's evidence comes from two individuals. There is a witness statement from Nithin Tomy[2] and a witness statement from Anupama Vikram Singh[3] with exhibits AVS1 – AVS2. The opponent's evidence in reply consists of a second witness statement from Matthew Peter Smith[4] with exhibit MPS8. That evidence was also accompanied by written submissions.[5] Neither party requested a hearing. Both filed written submissions in lieu.[6]

Preliminary issues

<u>Missing evidence</u>

7) Upon reviewing the papers for this case, it came to my attention that the applicant had, in its submissions in lieu, referred to certain evidence which did not appear to have been filed in the proceedings. As such, I wrote to the applicant (sending a copy to the opponent) on 12 March 2026, in the following terms:

> "I refer to the above proceedings. I am the Hearing Officer to whom this case has been passed for a decision from the papers.
>
> Upon review of the papers in this case, it has come to my attention that, in paragraphs 17 and 18 of its submissions in lieu of a hearing (filed on 16 September 2025), the applicant refers to 'five sworn affidavits from independent UK shopkeepers'. However, there is no such evidence on the file before me. The only evidence from the applicant on the case file consists of the following: i) a witness statement from Nithin Tomy, and ii) a witness

[1] Dated 27 March 2025
[2] Dated 23 April 2025
[3] Dated 16 May 2025
[4] Dated 28 July 2025
[5] Dated 28 July 2025
[6] The opponent's submissions are dated 16 September 2025; the applicant's are dated 19 May 2025 (although they were filed on 16 September 2025).

statement from Anupama Vikram Singh with exhibits AVS1 – AVS2.

In the absence of any comments from you within seven days of the date of this letter, that is, by **19 March 2026**, I will disregard the reference to the five affidavits because no such evidence has been filed. The decision will then be made on the basis that the only evidence from the applicant is that referred to at points i) and ii) above.

A letter in identical terms has been sent to the other side."

8) I received no response from the applicant within the time allowed. Accordingly, the only evidence I have taken into consideration is that listed in paragraph 6 of this decision.

9) I have also since noted that Ms Singh refers in her witness statement to a copy of an invoice 'from the Applicant's distributor' which she states is present in exhibit AVS1. However, no such invoice is present in that exhibit. This was highlighted by the opponent in its submissions in reply.[7] The applicant has taken no action in response to the opponent's observation. I take this to mean that the applicant does not wish for such evidence to be considered. In any event, that invoice would have not assisted the applicant under section 5(2)(b) of the Act, bearing in mind my comments below in relation to the other preliminary issues.

<u>Applicant's claims of reputation and goodwill</u>

10) The applicant claims that it has goodwill and a reputation in the UK under the contested mark.[8] However, these claims are irrelevant to the pleaded grounds before me.

[7] Page 2, point 1.
[8] Witness statement of Anupama Vikram Singh, [8]

Applicant's claim of co-existence and lack of confusion

11) The applicant claims that the parties have co-existed in the marketplace and that it has never become aware of any instances of confusion.[9] This contention is not supported by any of the material before me. Firstly, whilst there is evidence of use before me from the applicant[10] there is no evidence before me showing any use by the opponent under the earlier mark in relation to the relevant goods covered by that mark. As such, there is nothing before me to indicate that the parties have both provided the relevant goods under the respective marks at issue in the UK and on such a scale that indicates that the average consumer has been exposed to both and been able to distinguish between them. Secondly, the applicant itself goes on to state that the opponent operates in the restaurant sector whereas the applicant provides 'packaged foods'.[11] The applicant therefore appears to acknowledge that the parties have not provided the same goods in the marketplace.

Other marks on the register with the prefix 'kaya-'

12) The applicant refers to a number of marks on the register beginning with the prefix 'kaya-'. It asserts that this shows customers are accustomed to distinguishing between such marks. It is well-established that the existence of similar marks on the register tells me nothing about what is happening in the marketplace. In the absence of evidence showing actual use of such marks in the UK, this point does not assist the applicant.

Evidence from Nithin Tomy

13) Nithin Tomy is the Director of the applicant's distributor in the UK. Along with evidence of sales and promotional figures for goods sold under the contested mark in the UK (which is irrelevant to the pleaded grounds), Nithin Tomy also states that they do not consider that the contested mark bears any resemblance to any other brand that they have come across in the market for similar goods and therefore causes no

[9] Witness statement of Anupama Vikram Singh, [9]
[10] From Anupama Vikram Singh and Nithin Tomy
[11] Applicant's submissions in lieu, [25]

confusion. It seems to me that the individual in question clearly has a vested interest in giving such an opinion given the business relationship that exists between them and the applicant. In any event, their opinion on the matter has no bearing on my decision.

Survey evidence

14) The applicant has submitted the results of a survey.[12] However, there are numerous issues with this survey which mean that it has no bearing upon my decision. Firstly, no permission has been sought to adduce the survey as required by Tribunal Practice Notice 2/2012 – 'Survey and Expert Witness Evidence'. Secondly, the survey indicates that it is based upon the marks 'Kayali flavors of Nature' and 'Kayal Kerala Backwater Cuisine' but no further context is given. As noted below, one of the survey questions asks whether the respective 'brand logos look or feel similar' but no image of the logos used in the survey are provided. All of this means that I cannot be sure how the marks looked to the individuals taking part on the survey. Thirdly, the size of the survey is not statistically significant, consisting of only 124 responses. Fourthly, it is far from clear that those individuals represented a relevant cross-section of the public. Fifthly, the questions put to the individuals were clearly leading, for example, 'Do the names sound so similar they could be confused as the same brand' and 'Do the brand logos look or feel similar enough to cause confusion?'. Clearly, the survey does not adhere to the requirements as set out in the head note to *Imperial Group plc & Another v. Philip Morris Limited & Another* [1984] RPC 293, which states as follows:

> "If a survey is to have validity (a) the interviewees must be selected so as to represent a relevant cross-section of the public, (b) the size must be statistically significant, (c) it must be conducted fairly, (d) all the surveys carried out must be disclosed including the number carried out, how they were conducted, and the totality of the persons involved, (e) the totality of the answers given must be disclosed and made available to the defendant, (f) the questions must not be leading nor should they lead the person answering into a field of speculation he would never have embarked upon had the question not been put, (h) the exact answers and not some abbreviated form must be recorded, (i) the instructions

[12] Exhibit AVS2

to the interviewers as to how to carry out the survey must be disclosed and (j) where the answers are coded for computer input, the coding instructions must be disclosed."

I will make no further mention of the survey evidence.

DECISION

15) The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. Accordingly, this decision will refer to decisions of the EU courts which predate the UK's withdrawal from the EU.

Approach

16) The opponent has not filed any evidence of use to support the statement of use made for UKTM 3115054 (its evidence goes to other matters pertaining to the use made by the applicant). Accordingly, it cannot rely upon that mark. Of the other two marks relied upon, the opponent's strongest case obviously lies with UKTM 4035450 because that mark is word-only, is not subject to proof of use and has the broadest specification. If the opponent does not succeed based on that mark, it clearly would not succeed based on UKTM 4044562. I proceed accordingly.

<u>Section 5(2)(b)</u>

17) Section 5(2)(b) of the Act states:

"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."

18) The following standard summary of the principles applicable to the assessment of the likelihood of confusion was approved by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Paris Europe Inc & Anor*, [2025] UKSC 25:

(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, in certain circumstances, be dominated by one or more of its components;

(f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

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

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

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

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

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

Comparison of goods

19) All relevant factors relating to the goods should be taken into account when making the comparison. In *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer* the Court of Justice of the European Union ('CJEU'), Case C-39/97, stated at paragraph 23 of its judgment:

"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 where, in *British Sugar Plc v James Robertson & Sons Limited* [1996] RPC 281, the following factors were highlighted as being relevant:

(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 terms of being complementary (one of the factors referred to in *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer*), this relates to close connections or relationships that are important or indispensable for the use of the other. In *Boston Scientific Ltd v OHIM* Case T- 325/06, it was stated:

"It is true that goods are complementary if 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 that the responsibility for those goods lies with the same undertaking.."

In Sanco SA v OHIM Case T-249/11, the General Court (‘GC’) found 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 was 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-O-255-13):

> “It may well be the case that wine glasses are almost always used with wine – and are, on any normal view, complementary in that sense - but it does not follow that wine and glassware are similar goods for trade mark purposes.”

Whilst on the other hand:

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

22) Further, in *Gérard Meric v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM* Case T-133/05) (‘*Meric’*) the GC held 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 the trade mark application (Case T-388/00 Institut für Lernsysteme v OHIM – Educational Services (ELS) [2002] ECR II-4301, paragraph 53) or when the goods designated by the trade mark application are included in a more general category designated by the earlier mark (Case T-104/01 Oberhauser v OHIM – Petit Liberto (Fifties) [2002] ECR II-4359, paragraphs 32 and 33; Case T-110/01 Vedial v OHIM – France Distribution (HUBERT) [2002] ECR II-5275,paragraphs 43 and 44; and Case T-10/03 Koubi v OHIM – Flabesa (CONFORFLEX) [2004] ECR II-719, paragraphs 41 and 42).”

23) The goods to be compared are:

Opponent's goods	Applicant's goods
Class 29: Meat, fish, poultry and game; milk, cheese, butter, yogurt and other milk products; fish-based food; meat; meat-based food; meat extracts; preserved, frozen, dried and cooked fruits and vegetables; vegetable-based food; fruit-based food; eggs; processed eggs; jellies, jams, compotes; preserved fish; preserved meat; pickles; pickled fish; oils and fats for food; pickled fish; edible oils and fats, preserves and pickles; prepared meals consisting primarily of fish or meat or poultry or vegetables. **Class 30:** Coffee, tea, cocoa and substitutes therefor; bread, pastries and confectionery; chocolate; ice cream, sorbets and other edible ices; cereal breakfast foods; preparations made from cereals; tapioca and sago; tapioca for food; rice, pasta and noodles; flour and preparations made from cereals; vegetable flour; salt, seasonings, spices, preserved herbs; flavouring blends of herbs, salt and spices; rice bread; bread flour; bread dough; sugar, honey,	**Class 29:** Meat; Poultry, not live; Edible oil; Edible oils and fats; Seafood, not live; Fish, not live; Frozen fruits; Frozen vegetables; Jams; Lentils; Frozen prepared meals consisting principally of vegetables; Banana chips; Prepared meals consisting primarily of meat; Prepared meals consisting primarily of poultry; Prepared meals consisting primarily of fish; Prepared meals consisting principally of vegetables. **Class 30:** Naan bread; Biscuits; Cakes; Chutney; Cocoa; Coffee; Flour; Honey; Relish [condiment]; Rice; Salt; Spices; Sugar; Tea; Vinegar; Curry powder; Curry spices; Rice flour; Samosas; Chocolate confections; Frozen confections; Processed cereals; Processed grains; Seasonings.

treacle; sugar confectionery; sauces [condiments]; breakfast cereals; processed cereals; ready-to-eat cereals; bread; bread biscuits; sweets; organic spices; spices in the form of powders; masala powder and spices; sauces; organic spices; spices in the form of powders; masala powder and spices; vinegar, sauces and other condiments; ice [frozen water]; dessert puddings and souffles; ice cream desserts; prepared meals consisting primarily of rice or pasta; chocolate products; pastries, cakes, tarts and biscuits (cookies); snack foods consisting principally of confectionery; puddings; sandwiches; hamburgers [sandwiches].	

24) I will begin by considering the applicant's goods in class 29 and will group goods together where it is appropriate to do so.

<u>Meat; Poultry, not live; Seafood, not live; Fish, not live</u>

25) These goods fall within the opponent's 'Meat, fish, poultry'. They are identical as per *Meric*.

<u>Edible oil; Edible oils and fats</u>

26) These goods fall within the opponent's 'edible oils and fats'. They are identical as per *Meric.*

<u>Frozen fruits; Frozen vegetables; Banana chips</u>

27) These goods fall within the opponent's 'preserved, frozen, dried and cooked fruits and vegetables'. They are identical as per *Meric.*

Jams

28) These goods are identical to the opponent's 'jams'.

Lentils

29) Lentils in class 29 are of the dried variety; they are pulses which come from the Lentil plant. As such, I find that they are highly similar to the opponent's '…dried…vegetables' owing to their shared users, method of production, nature, purpose, method of use, trade channels and the competitive relationship in play.

Frozen prepared meals consisting principally of vegetables; Prepared meals consisting primarily of meat; Prepared meals consisting primarily of poultry; Prepared meals consisting primarily of fish; Prepared meals consisting principally of vegetables

30) These goods fall within the opponent's 'prepared meals consisting primarily of fish or meat or poultry or vegetables'. They are identical as per *Meric.*

31) I now turn to consider the contested goods in class 30.

Naan bread

32) These goods fall within the opponent's 'bread'. They are identical as per *Meric.*

Cocoa; Coffee; Tea; Biscuits; Cakes; Honey; Rice; Sugar; Vinegar; Salt; Spices; Flour; Seasonings

33) These goods are identical to the same terms in the opponent's specification.

Chutney; Relish [condiment]

34) These goods fall within the opponent's 'sauces and other condiments'. They are identical as per *Meric.*

Rice flour

35) These goods fall within the opponent's 'flour'. They are identical as per *Meric.*

Curry powder; Curry spices

36) These goods fall within the opponent's 'spices' and 'spices in the form of powders'. They are identical as per *Meric.*

Samosas

37) These goods fall within the opponent's 'pastries'. They are identical as per *Meric.*

Chocolate confections; Frozen confections

38) These goods fall within the opponent's 'confectionery'. They are identical as per *Meric.*

Processed cereals; Processed grains

39) These goods fall within the opponent's 'preparations made from cereals'. They are identical as per *Meric.*

Average consumer and the purchasing process

40) The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer,* Case C-342/97.

41) In *Iconix Luxembourg Holdings SARL v Dream Paris Europe Inc & Anor*, [2025] UKSC 25, the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)* [2024] EWCA Civ 262, where he pointed out that:

> (a) Consumers who are ill-informed or careless, or consumers with specialised knowledge or who are excessively careful are excluded from consideration;
>
> (b) The average consumer provides a standard which enables the courts to strike a balance between the competing interests involved, such as trade mark owners, their competitors and consumers;
>
> (c) The average consumer is neither a single hypothetical person nor a mathematical average; assessment from the perspective of the average consumer does not involve a statistical test. There is no single meaning rule and if, having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, a finding of infringement may properly be made;
>
> (d) Assessment from the perspective of the average consumer is intended to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by and enabling courts and tribunals to determine such issues so far as possible without the need for evidence;
>
> (e) The average consumer's level of attention varies according to the category of goods or services in question; and
>
> (f) the average consumer rarely has the opportunity to make direct comparisons between trade marks (or between trade marks and signs) and must instead rely upon the imperfect picture of the trade mark they have kept in their mind.

42) The average consumer for the goods at issue is the general public. The purchasing act will be primarily visual. That said, the aural aspect should not be ignored because

the goods may sometimes be the subject of discussions with sales representatives, for example. Some are likely to attract little consideration and may well be the subject of an impulse purchase. Others may attract more consideration with factors such as flavour, form, ingredients, portion size or allergens being borne in mind in the purchasing decision. I would expect the level of attention paid during the purchase to range from low to medium depending upon the precise goods in question.

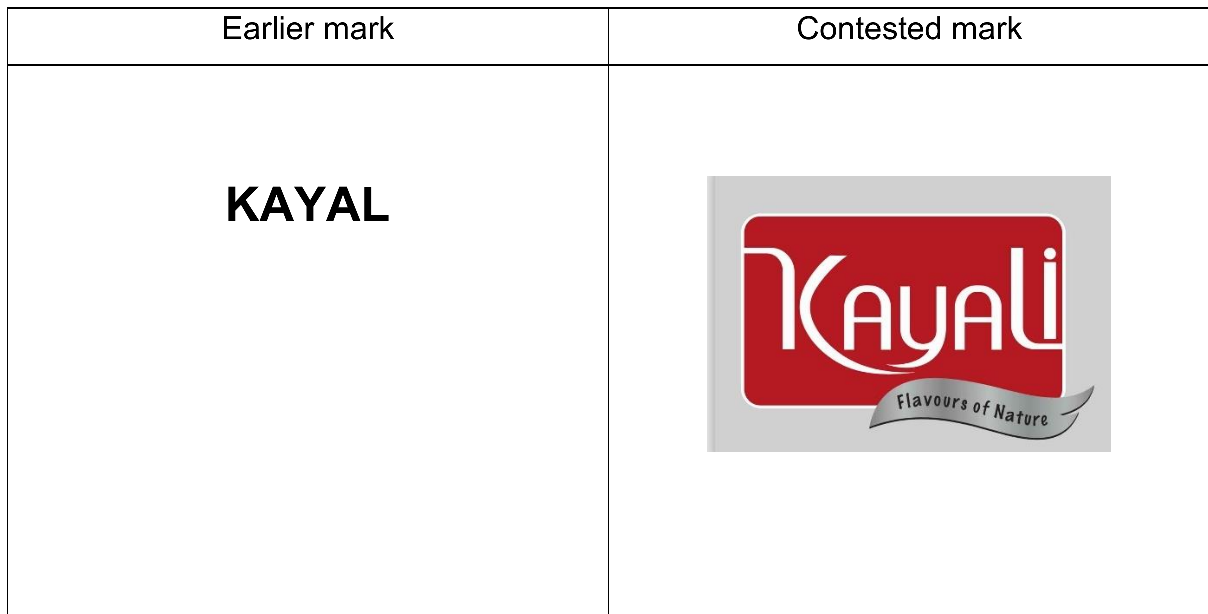
Comparison of marks

43) 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."

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

44) The marks are, as follows:

Earlier mark	Contested mark
KAYAL	

45) The earlier mark consists of the single word KAYAL in which its overall impression lies. The contested mark is dominated by the word Kayali; the presentation of that word in white, the particular font in which the word is presented and the stylisation of the letter ‘k’ play lesser roles than the word itself. The red rectangular background with the grey border plays an even lesser role. The words ‘Flavours of Nature’ and the silvery banner-like shape upon which those words appear play the smallest role.

46) Visually, the word in the contested mark contains the entirety of the word in the earlier mark; the only difference being the addition of the letter ‘i’ at the end of the contested mark. The stylisation of the letter ‘k’ in the contested mark is absent from the earlier mark. All the other elements in the contested mark (the rectangular background and border and the words ‘Flavours of Nature’ and the banner-like shape) are also not present in the earlier mark. Notwithstanding the latter differences, I find a high degree of visual similarity between the marks.

47) Aurally, the first two syllables of the word Kayali are identical to the only two syllables in the earlier mark. The contested mark also contains a third syllable which is likely to be pronounced as ‘ee’; this is a point of aural difference. I consider it unlikely that the words ‘Flavours of Nature’ would be articulated given their subordinate size

and positioning. If that is right, there is a high degree of aural similarity between the marks. Even allowing for the articulation of the words on the banner-like shape, I find a medium degree of aural similarity between the marks.

48) Turning to the conceptual comparison, I do not consider that the earlier mark evokes any immediately graspable concept; it will be perceived as a meaningless invented word. The same can be said of the word Kayali in the contested mark. To that extent the conceptual position is neutral. Whilst the words ''Flavours of Nature' do create a conceptual difference, they are, in my view, non-distinctive and therefore have little, if any, role to play in distinguishing the marks from a conceptual perspective.

Distinctive character of the earlier mark

49) The distinctive character of the earlier mark must be considered. The more distinctive it is, either by inherent nature or by use, the greater the likelihood of confusion between it and the contested mark (*Sabel BV v Puma AG*). 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 *WindsurfingChiemsee* 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)."

50) As I noted earlier, the opponent has not filed evidence of use of its earlier mark. Therefore, I have only the inherent level of distinctiveness to consider. The word KAYAL is likely to be perceived as an invented one with no meaning. As such, it is neither descriptive nor allusive in relation to any of the relevant goods. I find it to have a <u>high</u> degree of inherent distinctiveness.

Likelihood of confusion

51) I must now feed all of my earlier findings into the global assessment of the likelihood of confusion, keeping in mind the following factors: i) the interdependency principle, whereby a lesser degree of similarity between the goods may be offset by a greater similarity between the marks, and vice versa (*Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*); ii) the principle that the more distinctive the earlier mark is, the greater the likelihood of confusion (*Sabel BV v Puma AG*), and; iii) the factor of imperfect recollection i.e. that consumers rarely have the opportunity to compare marks side by side but must rather rely on the imperfect picture that they have kept in their mind (*Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V).*

52) The respective goods are identical or highly similar and the marks are visually highly similar. Furthermore, the earlier mark has a high degree of distinctiveness. These are all factors weighing heavily in the opponent's favour. Additionally, there is, either a high or medium degree of aural similarity between the marks depending upon whether all of the words in the contested mark are vocalised or not. Furthermore, to the extent that the respective words KAYAL and Kayali evoke no clear meaning, the conceptual position is neutral; the conceptual difference arising from the words on the banner-like shape in the contested mark has little, if any, role to play. Weighing all these factors, I find that the average consumer is likely to mistake one mark for the other through imperfect recollection, whether paying a low or medium level of attention. There is a likelihood of direct confusion.

53) I will now also consider the likelihood of indirect confusion. In this connection, I bear in mind that in *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10 (*L.A. Sugar),* Mr Iain Purvis Q.C. (as he then was), sitting 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)".

54) I also keep in mind that in *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (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. Furthermore, it is not sufficient that a mark merely calls to mind another mark: *Duebros Limited v Heirler Cenovis GmbH,* BL O/547/17. This is mere association not indirect confusion.

55) I bear in mind that the categories listed above in *L.A. Sugar* are, of course, not an exhaustive list of all the ways in which indirect confusion can occur; they are merely examples of the way in which it <u>tends</u> to occur.

56) I find that, in the event the average consumer recognises that the respective marks are not the same, they are still likely to believe that the respective goods come from the same or linked undertaking(s). I make this finding bearing in mind that the respective words KAYAL and Kayali are likely to be misremembered as being the same word. That being so and, given that the other elements present in the contested mark are of the kind which one would expect to see in a brand variant/extension, there is also a likelihood of indirect confusion. **The opposition under Section 5(2)(b) of the Act succeeds.**

COSTS

57) The opponent has been successful and is entitled to an award of costs. Using the guidance in Tribunal Practice Notice 1/2023, I award the opponent costs on the basis set out below. I make no award for the preparation and filing of the opponent’s evidence because it went to irrelevant matters that were of no assistance to me.

Official fee	£100
Preparing a statement and considering the other side’s statement	£300

Written submissions filed with evidence in reply	£350
Written submissions in lieu of a hearing	£350
Total:	**£1100**

58) I order Lily and Bridge Corporation to pay VANTOM CONSULTANCY LTD the sum of **£1100**. 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 30th day of March 2026

Beverley Hedley,
For the Registrar