O/0288/26

TRADE MARKS ACT 1994

IN THE MATTER OF INTERNATIONAL REGISTRATION NO. WO0000001781974 IN THE NAME OF PARC GLOBAL PTE. LTD. FOR THE FOLLOWING MARK:

GOLD FARM

IN CLASS 31

AND

IN THE MATTER OF OPPOSITION THERETO UNDER NO. OP000449701 BY EAGLE FOODS LIMITED

BACKGROUND AND PLEADINGS

1. PARC GLOBAL PTE. LTD. ("the holder") is the holder of the International Registration shown on the cover page of this decision ("the IR"). The IR was registered on 28 February 2024 and, with effect from the same date, the holder designated the UK as a territory in which they seek to protect the IR under the terms of the Protocol of the Madrid Agreement. The IR was accepted and published in the Trade Marks Journal for opposition purposes on 21 June 2024. The holder seeks protection in the UK for the following goods and services:[1]

   Class 31: Lentils, fresh; fresh pulses; live seafood; raw and unprocessed aquacultural and forestry products; raw and unprocessed grains and seeds; fresh vegetables, fresh herbs; natural plants and flowers; bulbs, seedlings and seeds for planting; live animals; foodstuffs and beverages for animals; malt.

2. The IR is derived from an earlier trade mark registered by the holder in Singapore. As such, the IR benefits from an earlier priority date of 3 February 2024, being the filing date of the holder's Singaporean mark.

3. On 18 September 2024, Eagle Foods Limited ("the opponent") sought to oppose the IR under sections 5(2)(a) and 5(2)(b) of the Trade Marks Act 1994 ("the Act").[2] As I will come to discuss below, only the section 5(2)(a) and 5(2)(b) grounds remain live in this opposition. Under these grounds, the opponent relies upon the following trade mark:

   GOLD FARM
   UK trade mark number: UK00003545037
   Filing date 16 October 2020; registration date 16 April 2021
   Relying on all goods being:

[1] The holder originally sought protection for a broader range of goods in class 29 and also sought protection in classes 30 and 31. I return to this point below.
[2] The opponent also originally partially opposed the designation under section 5(1) of the Act. Again, I return to this point below.

Class 29: Meat, fish, poultry and game; chicken; chicken nuggets; chicken croquettes; chicken balls; chicken wings; chicken goujons; chicken fillets; chicken burgers; chicken popcorn; meat extracts; preserved, frozen, dried and cooked fruits and vegetables; jellies, jam, compotes; eggs; milk, cheese, butter, yoghurt and other milk products; oils and fats for food.

4. Under the section 5(2)(a) ground, the opponent maintains that the marks at issue are identical and states that the similarity in respect of all goods causes a risk of confusion on the part of the consumer. As for its claim under the section 5(2)(b) ground, the opponent states there is a risk of confusion on the part of the consumer due to the high similarity of the marks and the identity and similarity in respect of all goods.[3]

5. The holder filed a counterstatement wherein it denied that the respective marks and respective goods are identical or similar. Consequently, it denied that the application can be successfully opposed under section 5(1), section 5(2)(a) and section 5(2)(b) and put the opponent to proof thereof and denied that a likelihood of confusion exists.

6. The opponent is represented by Dolleymores. The holder is represented by RevoMark. Neither party filed evidence. The opponent filed written submissions during the evidence rounds. No hearing was requested and neither party filed written submissions in lieu. This decision is taken following a careful perusal of the papers.

7. 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

[3] The holder originally applied to protect its mark in respect of goods in classes 29, 30 and 31. By virtue of initially relying on section 5(1), the opponent's position was that the marks and class 29 goods of both parties were identical.

assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

PRELIMINARY ISSUES

Preliminary Indication

8. The holder originally applied to protect its mark in respect of goods in classes 29 and 30 as well as class 31. The opposition was also initially brought under section 5(1) of the Act. By virtue of initially relying on section 5(1), the opponent's position was that the marks and the class 29 goods of both parties were identical.

9. On 28 November 2024, the Tribunal issued a preliminary indication wherein it found that the identity/similarity between the respective marks and the goods at issue was sufficient to result in a likelihood of confusion in relation to the goods in classes 29 and 30 of the designation. For the goods in class 31 of the designation, the Tribunal considered that a more in-depth comparison was needed and therefore a preliminary indication was not appropriate on this occasion. In giving its preliminary indication that the designation should be refused for some of the goods, the Tribunal provided the holder with the opportunity to give notice of its intention to proceed for those goods via a Form TM53, which was to be filed on or before 30 December 2024. The Tribunal set out that if the holder did not file a Form TM53, it would be deemed to have withdrawn its designation for the goods for which the Hearing Officer indicated that the designation should be refused. As the holder did not file a Form TM53 by the specified deadline, the Tribunal deemed the holder to have withdrawn those goods for which the Hearing Officer indicated the designation be refused and therefore classes 29 and 30 were removed and the international registration proceeded under the class 31 goods only. This was confirmed to the parties by way of written correspondence dated 27 January 2025. Consequently, I have only the holder's class 31 goods to consider.

10. For the avoidance of doubt, I was not the Hearing Officer that gave the preliminary indication. While I have had sight of the preliminary indication, I can confirm that I

am not bound by it and will, instead, proceed to make my decision based on my own consideration of the relevant assessments that I will discuss below.

Revised holder's specification – Class 31

11. The Tribunal wrote to both parties on 6 January 2026 to inform them that, following notification from WIPO, the holder's specification had been amended to read as follows:

Class 31 – *Lentils, fresh; fresh pulses; live seafood; raw and unprocessed aquacultural and forestry products; raw and unprocessed grains and seeds; fresh vegetables, fresh herbs; natural plants and flowers; bulbs, seedlings and seeds for planting; live animals; foodstuffs and beverages for animals; malt*.

The Tribunal asked both parties to confirm in writing, on or before 20 January 2026, whether this amendment would allow the opposition to be withdrawn. The Tribunal stated that if the opposition proceedings were not withdrawn by the 20 January 2026, a decision from the papers would be issued in due course. The Tribunal did not receive a response from either party.

12. It is noted that the opponent's submissions refer to a previous version of the holder's class 31 specification including the terms "raw and unprocessed agricultural and horticultural products" and "fresh fruits" in addition to the terms included in the current class 31 specification. Please note, my assessment will be limited to only those goods that remain in the holder's class 31 specification (as per paragraph 11 of this decision).

My approach

13. I will begin by considering the opposition under the section 5(2)(a) ground since it requires identity between the marks. It will only be necessary to consider the section 5(2)(b) grounds if the section 5(2)(a) grounds fails.

DECISION

Section 5(2)(a) legislation

14. Section 5(2)(a) of the Act is as follows:

"5(2) A trade mark shall not be registered if because-

(a) it is identical with an earlier trade mark and is to be registered for goods or services 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 states as follows:

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

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

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

[…]

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

17. Given its earlier filing date, the opponent's mark qualifies as an earlier trade mark under the above provisions. As the opponent's mark did not complete its registration process more than five years prior to the designation date of the holder's mark, it is not subject to the use provisions meaning that the opponent is entitled to rely on all of the goods for which its mark is registered. In its counterstatement, the holder stated "The applicant denies that the application can be refused in terms of section 5(1) or 5(2)(a) or 5(2)(b) and puts the opponent to proof thereof". However, the holder did not request proof of use at section 7 of the Form TM8 and given the opponent's mark was not registered more than five years prior to the filing date of the holder's mark, the proof of use provisions do not apply.

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

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

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

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

Identity of the marks

19. It is a pre-requisite of section 5(2)(a) of the Act that the trade marks at issue are identical. In this case, the holder's mark is a figurative representation of the two words 'GOLD FARM' in a black standard typeface. The opponent's mark is a word only mark for the exact same two words. The fair and notional use of word only marks covers the use of the words within them in any standard typeface. On that basis, I am content to conclude that this is covered by fair and notional use of the opponent's mark. As a result, I find that the respective marks are identical. The opposition against the holder's mark can therefore proceed in respect of section 5(2)(a).

Comparison of goods

20. The parties' goods are outlined below:

The opponent's goods	**The holder's goods**
Class 29: Meat, fish, poultry and game; chicken; chicken nuggets; chicken croquettes; chicken balls; chicken wings; chicken goujons; chicken fillets; chicken burgers; chicken popcorn; meat extracts; preserved, frozen, dried and cooked fruits and vegetables; jellies, jam, compotes; eggs; milk, cheese, butter, yoghurt and other milk products; oils and fats for food.	Class 31: Lentils, fresh; fresh pulses; live seafood; raw and unprocessed aquacultural and forestry products; raw and unprocessed grains and seeds; fresh vegetables, fresh herbs; natural plants and flowers; bulbs, seedlings and seeds for planting; live animals; foodstuffs and beverages for animals; malt.

21. When making the comparison, all relevant factors relating to the goods in the specifications should be taken into account, as per *Canon* Case C-39/97, where the Court of Justice of the European Union ("CJEU") stated at paragraph 23 of its judgement:

"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."

22. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, for assessing similarity were:

(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.

23. 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 fur 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."

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

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

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

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

26. 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."

27. In *YouView TV Ltd v Total Ltd*, [2012] EWHC 3158 (Ch), paragraph 12, Floyd J (as he then was) gave the following guidance on construing the words used in specifications:

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

28. I bear in mind that it is permissible to group goods together for the purposes of assessment: *Separode Trade Mark*.[4]

29. Pursuant to section 60A of the Act, I am mindful of the fact that the goods may not be automatically found to be dissimilar simply because they fall in a different class.

30. In its statement of grounds, the opponent's position is that the holder's class 31 goods are highly similar to the opponent's goods. The opponent states that the nature and purpose of the opponent's goods and the holder's goods are the same, as are the trade channels through which they move, and based on the identity of the trade marks and the similarity in respect of the goods there is a risk of confusion on the part of the consumer. The opponent therefore requests that in accordance with section 5(2)(a) of the Act, the holder's UK designation is refused in its entirety.

[4] BL O-399-10 (AP)

31. As stated at paragraph 5 above, the holder denies that the respective goods are identical or similar.

32. In its written submissions, the opponent describes in greater detail the claimed identity and similarity between the opponent's class 29 goods and the holder's class 31 goods.

33. I do not intend to summarise the opponent's statement of grounds or written submissions in full here. However, I confirm that I have taken all filed documents into account and will summarise them to the extent deemed necessary below.

Lentils, fresh; Fresh pulses.

34. Pulses are dried, edible seeds from legume plants that include lentils. The closest comparable term in the opponent's specification is "preserved, frozen, dried and cooked fruits and vegetables". The respective goods overlap in nature as they are all edible plant-based foodstuffs. The purpose of the respective goods overlaps as they are used as a type of food for human consumption after cooking (in the case of lentils fresh, fresh pulses and frozen fruits and vegetables) or as per their current state in the case of preserved, dried and cooked fruits and vegetables. Their method of use is similar as they will all be used as ingredients for meals for human consumption. Fresh lentils and fresh pulses can be used as substitutes for vegetables in meals, meaning there is an element of competition. The trade channels are similar as all goods appear in supermarkets or other food retail establishments and may all be found in the same aisles (canned foods). Taking all of these factors into account, I consider that the goods are similar to a medium degree.

Raw and unprocessed aquacultural and forestry products.

35. The above holder's goods include products such as fish, marine plants, unprocessed wood and unprocessed plants. The closest comparable term in the opponent's specification to the above holder's term is "preserved, frozen, dried and cooked fruits and vegetables". As the opponent's goods are processed food products and the holder's goods are raw and unprocessed aquacultural and

forestry products, the opponent's goods and holder's goods differ in nature. The purpose of the opponent's products is human consumption. Whilst that might be the end point for some of the holder's goods, that is a very high level point of overlap. The trade channels of the respective goods differ with the opponent's goods being sold via wholesalers, timber merchants or fishermen whereas the opponent's goods are sold via supermarkets or other food retail establishments. If there is any overlap insofar as they can all be sold in large retailers, such as supermarkets, they would be sold in different aisles. The users of the goods may overlap, being members of the general public, if they are choosing the goods for consumption. However, this is a very high level point of overlap. I do not consider the goods to be complementary or in competition. Overall, I find the goods to be dissimilar.

Raw and unprocessed grains and seeds.

36. The closest comparable term in the opponent's specification to the above holder's term is "preserved, frozen, dried and cooked fruits and vegetables". However, these respective goods differ in their nature as the holder's goods are raw and unprocessed grains and seeds whereas the opponent's goods are processed fruits and vegetables. The purpose of the opponent's goods is consumption whereas the purpose of the holder's goods can be either consumption or planting. Whilst consumers are unlikely to eat raw and unprocessed grains they are able to eat raw and unprocessed seeds such as sunflower seeds. There is, therefore, some overlap (albeit at a very high level). The respective goods overlap in trade channels as both goods can be sold in supermarkets, albeit they are likely to be in clearly defined sections. There is an overlap in method of use to a degree with both goods being eaten directly or used in cooking. However, again, this is a very general level of overlap. There is no competition or complementarity. Taking all of this into account, I find the goods to be dissimilar.

Bulbs, seedlings and seeds for planting.

37. The above holder's goods are plant material a consumer would plant and then care for to grow. The closest comparable term in the opponent's specification is

"preserved, frozen, dried and cooked fruits and vegetables". However, these respective goods differ in both nature, purpose, use and trade channels. It could be argued that *bulbs, seedlings and seeds for planting* grow into vegetables, however they could also grow into decorative flowers. The above holder's goods may be found in a garden centre or plant section of a supermarket whereas the opponent's goods will be found in different sections of the supermarket or a greengrocer. Any competition is minimal and there is no complementarity. On this basis, I find these goods to be dissimilar. If I am wrong in this finding, then they will be similar to only a very low degree.

Natural plants and flowers

38. The same reasoning applies as per the preceding paragraph, insofar as the plants might relate to vegetable or fruit plants. Given this, I find the goods to be dissimilar. However, if I am wrong in this finding, I find they will be similar to only a very low degree. The above holder's goods are plants and flowers a consumer would plant and/or then care for to grow. Some natural plants and flowers are edible. The closest comparable term in the opponent's specification is "preserved, frozen, dried and cooked fruits and vegetables". However, the respective goods differ in nature as the holder's goods are live horticultural goods whereas the opponent's goods are processed fruits and vegetables. *Natural plants and flowers* are ordinarily used for decoration or gardening but some can be eaten whereas "preserved, frozen, dried and cooked fruits and vegetables" are used for human consumption. *Natural plants and flowers* are displayed, cultivated, gifted or sometimes eaten whereas "preserved, frozen, dried and cooked fruits and vegetables" are eaten. The trade channels differ as the holder's goods are located in florists, garden centres or supermarkets whereas the opponent's goods are located in the fruit and vegetable section of the supermarket. Taken all of the above into account, and taking into account *YouView*, given the different natures of the goods, I find the goods to be dissimilar. However, if I am wrong in this finding, I find they will be similar to only a very low degree.

Live animals.

39. Taking into account the decision in *YouView*, to construe that the above holder's goods are identical to any of the opponent's class 29 goods of foodstuffs would be to unnaturally strain their meaning from their ordinary, natural and core purpose. The closest comparable term in the opponent's specification is "meat, fish, poultry and game". The opponent's goods and the above holder's good are fundamentally different in nature. *Live animals* are living creatures whereas "meat, fish, poultry and game" are food products derived from animals or fish, sometimes processed. The respective goods also have different purposes with *live animals* being kept as livestock or pets whereas "meat, fish, poultry and game" are intended for human consumption. The method of use differs as *live animals* require care and feeding whereas "meat, fish, poultry and game" is cooked and consumed by consumers. Lastly, the trade channels also differ with *live animals* being sold through pet suppliers, breeders or livestock markets and "meat, fish, poultry and game" being sold at butchers, fishmongers and supermarkets. The respective goods are neither in competition nor are they complementary. On this basis, I find these goods to be dissimilar.

Live seafood.

40. The closest comparable term in the opponent's specification is "meat, fish, poultry and game" which are food products derived from animals or fish, sometimes processed, intended for consumption. "Seafood" refers to shellfish or other fish from the sea that can be eaten. Given the context in which the term "fish" appears in the opponent's specification as part of the term "meat, fish, poultry and game" the implication is that it refers to fish that is for consumption because that is what the other words in the term mean. The applicant's term *Live seafood* refers to live creatures, whereas the opponent's term "meat, fish, poultry and game" does not. However, even though the respective goods differ in nature there is an overlap in relation to trade channels, users and purpose. *Live seafood* will be sold through fish mongers and "meat, fish, poultry and game" will be sold at butchers, fish mongers and supermarkets. Fish mongers sell lobsters which are live as well as filleted fish, resulting in an overlap in trade channel. Additionally, there is an overlap

in purpose with both goods being used for consumption. There is also some overlap between the goods as the consumer may choose to buy seafood which is live to prepare at home or which has been prepared for them. The users of the goods may overlap, being members of the general public, if they are choosing the goods for consumption. On this basis, I find these goods to be similar to a low degree. This finding can be distinguished from the finding of dissimilarity for "live animals" in the preceding paragraph as there aren't many (if any) scenarios where a consumer would buy a live animal as an alternative for meat.

Fresh vegetables, fresh herbs.

41. Both of the above holder's goods are foods that originate from plants. The closest comparable opponent's term is "preserved, frozen, dried and cooked fruits and vegetables". *Fresh vegetables* are similar to "preserved, frozen, dried and cooked fruits and vegetables" as they have the same nature and purpose, the only difference being that "frozen fruits and vegetables" need to be defrosted or cooked before they can be eaten whilst "preserved, dried and cooked fruits and vegetables" are ready for consumption. The goods target the same users, share the same trade channels and although they are not complementary, they are competitive. Taken all of these factors into account, I find the goods similar to a high degree.

42. I find the same reasoning applies to *fresh herbs* which originate from plants, as do vegetables, albeit herbs are aromatic. However, there is a lower level of competition between *fresh herbs* and "preserved, frozen, dried and cooked fruits and vegetables" than *fresh vegetables* and "preserved, frozen, dried and cooked fruits and vegetables". Given this, I find these goods to be similar to a medium degree.

Foodstuffs and beverages for animals.

43. The closest comparable term in the opponent's specification to the above holder's term, *foodstuffs and beverages for animals*, is "meat, fish, poultry and game" as *foodstuffs for animals* could include "meat, fish, poultry and game". Ordinarily, the

above holder's goods will reach the market through different trade channels than the opponent's goods as the holder's goods will be sold in pet stores or the pet section of a supermarket whereas the opponent's goods will be sold in a butchers, fishmongers or food section of a supermarket. The users could overlap where people own pets. Although, the nature of the goods would overlap in terms of both being potentially meat, fish, poultry or game, they are typically of different qualities/grades with *foodstuffs for animals* being of a lower grade or quality which would be a point of difference in this regard. Additionally, the method of use is different as is the purpose. There is no competition or complementarity between the goods. Finally, there is no overlap in similarity between the applicant's *beverages for animals* and the opponent's "meat, fish, poultry and game" or any other terms in the opponent's specification. Taking all of this into account, I consider the goods to be dissimilar.

Malt.

44. Malt is a type of grain that is generally used to make some alcoholic drinks. The closest comparable term in the opponent's specification is "preserved, frozen, dried and cooked fruits and vegetables". However, the respective goods have different natures, purposes, methods of use and trade channels. As stated, *malt* is a type of grain generally used to make alcoholic drinks such as whisky or beer, whereas "preserved, frozen, dried and cooked fruits and vegetables" are foods used for consumption directly or cooking. *Malt* is not typically consumed directly, it requires further processing and is used as an ingredient. "Preserved, dried and cooked fruits and vegetables" are often ready to eat with only "frozen fruit and vegetables" requiring defrosting or cooking. The trade channels will differ with *malt* being sold to breweries or distilleries and "preserved, frozen, dried and cooked fruits and vegetables" being sold to the general public through supermarkets and other food retail establishments. The respective goods are not in competition and are not complementary. Overall, I consider the goods to be dissimilar.

Conclusion on the goods comparison

45. The opposition reliant upon section 5(2)(a) fails in respect of those goods I have found to be dissimilar. This is on the basis that for there to exist a likelihood of confusion under this ground, there must be a degree of similarity between the goods.[5] As a result, my findings above mean that the opposition fails in respect of the following goods that I have found dissimilar:

"Raw and unprocessed aquacultural and forestry products"; "raw and unprocessed grains and seeds"; "bulbs, seedlings and seeds for planting"; "live animals"; "natural plants and flowers", "foodstuffs and beverages for animals" and "malt".

46. As a result of the above, the section 5(2)(a) ground only proceeds in relation to the similar goods being "lentils, fresh"; "fresh pulses"; "live seafood" and "fresh vegetables, fresh herbs".

The average consumer and the nature of the purchasing act

47. 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.

48. 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;

[5] *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA

(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.

49. I have no submissions from either party regarding who they determine the average consumer for the goods to be. I consider that the average consumer is a member of the general public. The goods could also be purchased by those in the trade for catering purposes and business users (such as farmers). However, I do not consider this to be the most common form of purchase. The consumer is likely to take into account the quality, freshness, price, expiry date, nutritional value and ethical and environmental considerations of the goods. Either way, the goods will

be selected with no more than an average (or medium) level of attention. The goods are likely to be purchased following self-selection from retail outlets, websites or following perusal of advertisements or catalogues. Consequently, visual considerations are likely to dominate the purchasing process. However, I do not discount that there will also be an aural component to the purchase as advice may be sought from sales assistants or the consumer may obtain word of mouth recommendations.

Distinctive character of the opponent's mark

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

> "22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).
>
> 23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see Windsurfing Chiemsee, paragraph 51)."

51. 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 opponent has not pleaded that its mark has obtained an enhanced level of distinctiveness nor has it filed any evidence to that effect. Therefore, I have only the inherent position to consider.

52. As set out above, the opponent's mark is a word only mark that consists of two words 'GOLD FARM'. As far as I understand it (and I have nothing before me to suggest otherwise), the word 'GOLD' refers to a colour and 'FARM' refers to land used to rear crops and/or animals. The mark could be considered to be allusive of the goods for which it is registered which could be produced from items grown on a farm and 'GOLD' could be understood to refer to the best quality products. The mark is not particularly remarkable from a trade mark perspective (being two ordinary dictionary words). As a result, I am of the view that the opponent's mark enjoys a low degree of inherent distinctive character.

Likelihood of confusion

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

trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

54. I have found the marks to be identical and I have found some goods to be similar to varying degrees. The average consumers are members of the general public at large as well as those in the trade for catering purposes and business users (such as farmers) who will select the goods via primarily visual means (though I do not discount an aural component) after having paid no more than an average (or medium) level of attention during the purchasing process. I have found the opponent's mark to possess a low degree of inherent distinctive character.

55. Taking all of the above factors into account, I find that there is nothing to distinguish the marks one from the other, based on the fact that the marks at issue are identical. Further, applying the principle of interdependence, I find that the identity of the marks is sufficient to offset any lower degree of similarity between the goods at issue. As such, regardless of the level of similarity between the goods at issue, the consumer will still be unable to recollect the marks with any degree of accuracy. Consequently, I find that there exists a likelihood of direct confusion between the marks in respect of the goods at issue.

56. As a result of the above, the opponent's opposition partially succeeds under section 5(2)(a) of the Act.

Final remarks

57. I do not need to return to consider the 5(2)(b) ground in any detail. This is because the 5(2)(b) ground concerns marks which are similar, not identical. As I have found the marks to be identical, section 5(2)(b) cannot apply.

CONCLUSION

58. The opposition succeeds in respect of the goods that I have found to be identical or similar. Therefore, the holder's mark is, subject to any successful appeal of my decision, refused registration for the following:

Class 31: Lentils, fresh; fresh pulses; live seafood; fresh vegetables, fresh herbs.

59. That being said, the holder's mark may proceed (again, subject to any successful appeal of my decision) for the following goods, which I have found to be dissimilar:

Class 31: Raw and unprocessed aquacultural and forestry products; raw and unprocessed grains and seeds; natural plants and flowers; bulbs, seedlings and seeds for planting; live animals; foodstuffs and beverages for animals; malt.

COSTS

60. On balance, I consider that the holder has enjoyed the greater degree of success in these proceedings. Therefore, I consider that the holder is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 1/2023. Given that the opponent has partially succeeded, and registration has been refused for some of the holder's goods, I consider it appropriate to reduce the costs award to a degree in order to reflect the opponent's partial success.

61. In the circumstances, I hereby award the holder the sum of £150 as a contribution towards its costs. The sum is calculated as follows:

Filing a counterstatement and considering the opponent's statement:	£150
Total	**£150**

62. I hereby order Eagle Foods Limited to pay PARC GLOBAL PTE. LTD. the sum of £150. The above 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 31st day of March 2026

N Barratt
For the Registrar