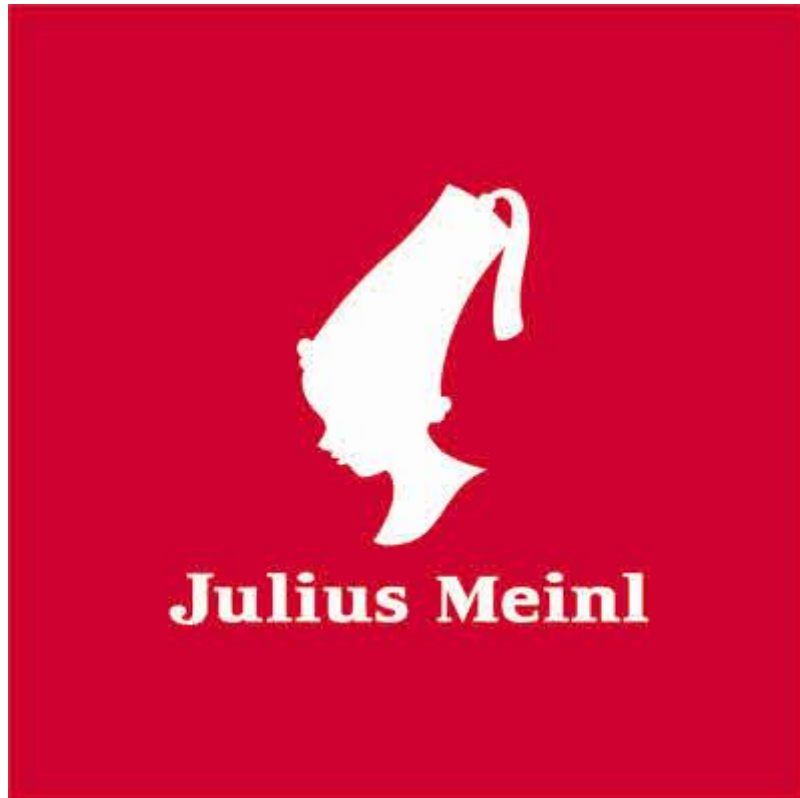


**O/0467/26**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO. UK00003879296  
BY EXCELLENT BRANDS JMI LIMITED TO REGISTER**



**IN CLASSES 29, 30 AND 43**

**AND**

**AND IN THE MATTER OF OPPOSITION UNDER NO 441124  
BY JULIUS MEINL**

## BACKGROUND AND PLEADINGS

1. On 17 February 2023, Excellent Brands JMI Limited (“the applicant”) applied to register the trade mark shown on the cover page of this decision in the UK. The application was accepted and published in the Trade Marks Journal on 3 March 2023 in respect of the following goods:

Class 29: Fruit preserved in alcohol; Fruit-based snack food; Cooked fruits; Preserved fruits; Crystallized fruits; Edible oils; Edible fats; Jams; Marmalade; Milk; Milk beverages, milk predominating; Milk products; Milk shakes.

Class 30: Coffee, tea, cocoa, sugar, artificial coffee, flour and preparations made from cereals; bread, pastry and confectionery (including frozen pastry and confectionery); ices; honey, treacle; yeast, baking powder; spices; long-life pastries; blancmange and blancmange in the form of powders; dessert creams; fruit sauces.

Class 43: Services for providing food and drink; Information and advice relating to the provision of food and drink; Provision of information relating to the preparation of food and drink; Provision of food and drink; Food and drink catering; Bar services; Cafeteria services; Café services.

2. On 2 June 2023, Julius Meinl (“the opponent”) opposed the application under section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opposition is directed against all goods in the application. The opponent relies upon the following marks:

# House of Julius Meinl

International registration no. 1646917

Date of protection of the International Registration in the UK: 30 June 25

Designation and International Registration Date: 6 October 2021

Priority date: 8 April 2021, from EU trade mark no. 018449511

The mark is registered for goods and services in classes 3, 4, 6, 7, 8, 9, 11, 16, 18, 21, 24, 25, 29, 30, 32, 33, 35, 36, 39 and 43. The goods and services relied upon in this opposition are listed in **Annex A**.

HOUSE OF JULIUS MEINL

UK registration no. 3700205<sup>1</sup>

Filing date: 24 September 2021; Date of registration: 25 February 2022

Priority date: 8 January 2015, from EU trade mark no. 1265784

Priority date: 8 July 2014, from Austrian trade mark no. AM 51604/2014

The mark is registered for goods and services in classes 3, 18, 20, 21, 25, 29, 30, 32, 33, 34, 35, 36 and 43. The goods and services relied upon in this opposition are listed in **Annex B**.

## HOUSE OF JULIUS MEINL

UK registration no. 3700210<sup>2</sup>

Filing date: 24 September 2021; Date of registration: 25 February 2022

Priority date: 8 January 2015, from EU trade mark no. 126 3975

Priority date: 8 July 2014, from Austrian trade mark no. AM 51607/2014

The mark is registered for goods and services in classes 3, 18, 20, 21, 25, 29, 30, 32, 33, 34, 35, 36 and 43. The goods and services relied upon in this opposition are listed in **Annex C**.

3. By virtue of their earlier filing dates, the above marks constitute earlier marks in accordance with section 6 of the Act. As they were registered less than five years prior to the date the applicant's mark was filed, the marks are not subject to proof of use in accordance with section 6A of the Act.

4. The opponent submits that the marks are similar<sup>3</sup> and that the goods and services at issue are similar or identical. Furthermore, the opponent submits that due to these factors, there is a likelihood of confusion between the marks, which includes a likelihood of association. The applicant admitted that the respective goods and services in the opponent's 3700205 and 3700210<sup>4</sup> specification, relied on for this opposition, and its specification are identical or similar as set out by the opponent in its submissions in the evidence rounds. The applicant submitted at the hearing that the marks are not confusingly similar.

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<sup>1</sup> This mark was filed pursuant to article 59 of the Withdrawal Agreement between the UK and the EU. The EU filing date, as mentioned above, was 8 January 2015.

<sup>2</sup> The mark was filed pursuant to article 59 of the Withdrawal Agreement between the UK and EU. The EU filing date, as mentioned above, was 8 January 2015.

<sup>3</sup> This is clear from section 5(2)(b) being pleaded by the opponent in the opposition.

<sup>4</sup> Applicant's skeleton arguments dated 15 July 2025 and reiterated at the Hearing.

5. The opponent filed written submissions in the evidence rounds. The applicant filed evidence in chief, and the opponent filed written submissions in reply. A hearing took place before me on 17 July 2025, via video conference. The applicant was represented by Mr Chris McLeod of Elkington and Fife LLP, who has represented the applicant throughout the proceedings. The opponent has been represented throughout the proceedings by Bird & Bird LLP, but elected not to attend the hearing.

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

## **EVIDENCE**

7. As mentioned previously, the opponent filed written submissions in its evidence round, which are dated 7 June 2024. The applicant filed evidence in chief in the form of the witness statement of Mr Christopher James McLeod dated 20 August 2024. Mr McLeod is a Partner at the applicant's representative, a position he has held since 2015. Mr McLeod's witness statement is accompanied by 3 exhibits, being CM1-3. Mr McLeod's evidence consists of a print out of the UK designation of IR 1646917, EUTM 018449511 and the opposition details. As discussed, the opponent filed written submissions in its evidence in reply round dated 21 October 2024.

8. I do not intend to summarise the evidence or submissions at this stage. However, in reaching my conclusion, it should be noted that I have carefully considered of all the evidence and submissions. I will refer to them throughout my decision where I deem it necessary to do so.

## **PRELIMINARY ISSUE AND MY APPROACH**

9. The applicant first raised that IR 1646917, which is relied on by the opponent in this opposition, is subject to opposition at the EU. This is also the case in relation to UK3700205 ('205 mark) which claims priority from EUTM 01265784, and the EUTM has been opposed at the EU. At the time of the hearing, the EU proceedings were suspended, and as of this date, neither of the proceedings have yet to be concluded. The applicant also commented on UK

mark 3700210 ('210 mark), which claims priority from EUTM 1263975. The applicant states that the EUTM no longer covers several goods in classes 29 and 30.

10. At the hearing, I informed the applicant that if, when drafting the decision, it became clear that IR1646917 and/or the '205 mark would impact the opposition, then I would not draft the decision or draft it on a provisional basis. However, if I were able to continue drafting the decision without the opponent's marks which are opposed at the EUIPO and without any detriment, then I would do so.

11. Addressing the applicant's comment in relation to changes to classes 29 and 30 of the EU mark from which the '210 mark claims priority, any change in the specification of the EUTM from which the UK mark claims priority does not directly affect the UK mark. Whilst the UK mark, which is a re-filed EUTM, retains the original EUTM filing date and any priority claims, it exists as its own property right in the UK. Therefore, any changes to the EUTM will not impact the mark as registered, and it can be relied upon as it appears in the UK trade mark register.

12. As the '210 mark is not subject to any other ongoing proceedings, I will proceed to determine the opposition on the basis of that mark. If necessary, I will return to the remainder of the marks, subject to opposition at the EU. However, for reasons that I will discuss later in the decision, it is my view that relying on the other earlier marks would not affect the outcome of the decision. I make this comment taking into account the marks and that the '210 mark's goods and services are identical to those in the '205 mark, and, whilst the goods and services are slightly different to IR 1646917, the differences are not material. Consequently, I can determine the opposition without a need to await the outcome of the ongoing proceedings at the EU for IR 1646917 and the '205 mark and without a requirement to make a provisional decision. I will proceed on that basis.

## **DECISION**

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

13. The opposition is based upon section 5(2)(b) of the Act, which 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”.

14. 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 Pairs 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. The average consumer is deemed to be reasonably well informed and reasonably circumspect and observant, but someone who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them they have kept in their 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 the earlier mark to mind, is not sufficient;
- j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;
- k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

**COMPARISON OF THE GOODS AND SERVICES**

15. As mentioned above, the decision will continue on the basis of the ‘210 mark. The applicant drew my attention at the hearing to the admission that was made in its skeleton arguments that the goods and services comparison made in the opponent’s submissions is correct. I will replicate the table below insofar as it relates to the application and the ‘210 mark:

<b>Class</b>	<b>Application wording</b>	<b>Earlier Registrations</b>
29	Fruit preserved in alcohol; cooked fruits; preserved fruits; crystallized fruits  Fruit-based snack food	Identical to “preserved, frozen, dried and cooked fruits and vegetables.”  Identical and similar to “preserved, frozen, dried and cooked fruits and vegetables” and “fruit beverages and fruit juices”.

	<p>Edible oils; Edible fats</p> <p>Jams; Marmalade</p> <p>Milk; milk beverages, milk predominating; milk shakes</p> <p>milk products</p>	<p>Identical to “edible oils and fats.”</p> <p>Similar to “jellies”.</p> <p>Similar to “mineral and aerated waters and other non-alcoholic beverages” and “eggs.”</p> <p>Similar to “eggs”.</p>
30	<p>Coffee, tea, cocoa, sugar, artificial coffee, flour and preparations made from cereals</p> <p>Bread, pastry and confectionery (including frozen pastry and confectionery)</p> <p>Ices</p>	<p>Identical and similar to “<i>flour and preparations made from cereals, bread, pastry and confectionery</i>”.</p> <p>AND</p> <p>Similar to “sweetmeats (candy)”, “mineral and aerated waters and other non-alcoholic beverages” and “syrups another preparations for making beverages.”</p> <p>Identical and similar to “flour and preparations made from cereals, bread, pastry and confectionery”, “ices”, “treacle,” “ices,” and “sweetmeats (candy).”</p> <p>Identical to “ices”.</p>

	<p>Honey, treacle</p> <p>Yeast, baking powder</p> <p>spices</p> <p>Long life pastries; Blancmange and blancmange in the form of powders</p> <p>Dessert creams</p> <p>Fruit sauces</p>	<p>Identical and similar to “treacle”.</p> <p>Identical to “yeast, baking powder”.</p> <p>Identical to “Spices”.</p> <p>Identical and similar to “flour and preparations made from cereals, bread, pastry and confectionery”.</p> <p>Similar to “ices”.</p> <p>Identical to “sauces (condiments)”.</p>
43	<p>Services for providing food and drink; Provision of food and drink; Cafeteria services; Café services</p> <p>Information and advice relating to the provision of food and drink; Provision of information relating to the preparation of food and drink;</p> <p>Food and drink catering; Bar services</p>	<p>Identical to “services for providing food, drink and temporary accommodation”.</p> <p>Similar to “services for providing food, drink and temporary accommodation”.</p> <p>Identical to “services for providing food, drink [...]”</p>

16. The parties have agreed that this table is an accurate representation of the identity and similarity between the goods and services at issue. I will not discuss the goods and services which the parties agree are identical any further. However, I note that whilst the parties have agreed that the remainder of the goods are similar, no comment has been made in relation to the level of similarity between them. From the agreement between the parties, I will proceed on the basis that all the goods and services which are not identical are similar to at least a very low degree. Despite this, I intend to conduct a comparison to identify specific levels of similarity.

17. In *Gérard Meric v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* case T-133/05, the General Court (GC) stated:

“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”.

18. In comparing the respective specifications, all relevant factors should be considered, as per *Canon*, where the Court of Justice of the European Union (“CJEU”) 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.”

19. Case law has described “complementary” as meaning that “... *there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think the responsibility for those goods lies with the same undertaking.*”<sup>5</sup>

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<sup>5</sup> *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06.

20. 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.

## Class 29

### *Jams; Marmalade*

21. As mentioned above, the opponent submitted (and the applicant agreed) that “Jams” and “marmalade” in the applicant’s specification are similar to “jellies” in the opponent’s specification. I note that the opponent’s term is a broad term that can encapsulate meat and fish jellies alongside fruit jellies. I have taken this into consideration in comparing the goods at issue. I consider that fruit jellies specifically within the opponent’s term are similar to the applicant’s term because they coincide in distribution channels, end users and producer. The method of use of the goods will be the same as will the purpose of the goods. I note that jams are typically made from crushed or pureed fruit, resulting in a thicker chunkier spread, whereas jellies are usually made from fruit juice and so will result in a smoother, firmer and translucent spread and marmalade is made from citrus fruits (including the peel) – therefore, the nature of the goods will differ slightly, though all the goods may be fruit-based spreads. Given that they are all fruit based spreads, purpose and method of use overlap, I consider that there will

be competition between the goods, as the users may select one good over the other. However, the goods are not complementary. Taking all the above into account, I consider the goods to be highly similar.

*Milk; milk beverages, milk predominating; milk shakes.*

22. As mentioned above, the opponent submitted (and the applicant agreed) that the above terms are similar to “mineral and aerated waters and other non-alcoholic beverages” and “eggs” in the opponent’s specification. However, no comment was made in relation to the level of similarity between the goods at issue.

23. All of the above terms in the applicant’s specification are all (or include) milk-based beverages such as milk and milkshakes. These goods will overlap in purpose with the opponent’s non-alcoholic beverages because they are goods that are used to quench the thirst of the drinker. The method of use will also be the same. The nature of the goods will differ as the applicant’s goods are milk based and the opponent’s goods are not (by virtue of them being class 32 and not 29). However, they are all liquids. The users of the goods will clearly overlap. I accept that there will be an overlap in trade channels to the extent that the goods may be sold through general retailers such as supermarkets. However, these goods are likely to be sold in different aisles, with the applicant’s goods being sold in the chiller section reserved for dairy products, and the opponent’s goods being sold in soft drink aisles. That being said, I do accept that to-go versions of these products might be sold alongside each other. There will be a degree of competition, as the consumer might choose between different categories of soft drinks. In my view, these goods are similar to a medium degree. I have also considered the similarity between ‘eggs’ in the opponent’s specification and the applicant’s goods but it does not improve the finding of similarity in relation to these goods.

*Milk products*

24. The opponent compared the applicant’s above goods to ‘eggs’ in its specification and submitted that they were similar, as mentioned previously, the applicant agreed with similarity between these goods. In my view, in relation to the comparison that was made to ‘eggs’ in the opponent’s specification, although they are all edible products, I find that they have no relevant factors in common with the opponent’s goods. The mere fact that the goods at issue can be classified as foodstuffs, is insufficient to establish similarity between the goods. The food industry encompasses a wide range of foods having very different natures and furthermore the products might be manufactured by different undertakings that specialise in a specific field

in the industry. While it is acknowledged that a wide range of different food products can be found at the same retail outlets, such as supermarkets, consumers are aware that the food being sold can originate from a multitude of different undertakings. Therefore, although the above contested goods are all food products, they have different natures and satisfy different nutritional purposes to the opponent's goods. Moreover, they differ in their usual producers and are not complementary, in the sense that one product is indispensable for the use of the other. Consequently, I would personally find that the applicant's goods and eggs are dissimilar. However, as both parties agree that the goods at issue are similar, I find the goods to be similar to a low degree.

### Class 30

*Coffee, tea, cocoa, [...] artificial coffee [...]*

25. The opponent submitted that the following goods are similar to the applicant's goods to "sweetmeats (candy)", "mineral and aerated waters and other non-alcoholic beverages" and "syrups another preparations for making beverages." I find that the best comparator is "mineral and aerated waters and other non-alcoholic beverages" in the opponent's specification. For the same reasons outlined in paragraph 22 above, I consider these goods overlap in trade channels and user with the opponent's goods. I also find there to be a competitive relationship. There will also be a degree of overlap in nature and purpose, as all are drinkable liquids. Taking all of the above into consideration, I find the goods to be similar to a medium degree.

*[...] Sugar [...]*

26. It was submitted, and agreed by both parties, that there is identity or similarity between the above goods and one of the following goods in the opponent's specification:

*Flour and preparations made from cereals, bread, pastry and confectionery; sweetmeats (candy); mineral and aerated waters and other non-alcoholic beverages; syrups another preparations for making beverages.*

27. In my view, in relation to the comparison that was made to the above goods in the opponent's specification, although they are all edible products, I find that they have no relevant factors in common with the opponent's goods for the reasons that I outlined in paragraph 24 above. In addition, for some of the goods at issue, just because the applicant's goods could be used in the production of some of the opponent's goods is insufficient to show that the

finished goods containing that component is similar to the product in its original form.<sup>6</sup> Whilst the users and the uses will be similar on a superficial level as the products are all consumer goods, the nature and the method will be different. The goods are not complementary and there will be no competition between them. Personally, I do not consider there to be any similarity between these goods and any of the opponent's goods. However, as both parties agree that the goods at issue are similar, I find the goods to be similar to a very low degree.

*[...] honey*

28. The opponent submitted that the applicant's goods are similar to "treacle" in its specification. I agree with the goods are similar. The goods coincide in nature and purpose as they are both viscous substances and used as a way of adding sweetness to a dish. Therefore, they will also overlap in method of use. It is my view that the goods will be sold through the same channels, most likely in the same aisle of a retail establishment and will have a competitive relationship. There will be an overlap in users. However, the goods are not complementary. Taking the above into account, I find the goods to be highly similar.

*[...] flour and preparations made from cereals*

29. As seen above, the opponent submitted that these goods were identical or similar to "flour and preparations made from cereals, bread, pastry and confectionery". It is my view that these goods in the applicant's specification are identical to "flour and preparations made from cereals [...]" in the opponent's specification.

*Dessert creams*

30. As stated above, the above goods were compared with "ices" in the opponent's specification and both parties agreed that they were similar, but no comment was made in relation to the level of similarity. The goods will coincide in purpose and there is an overlap in nature. I consider that the goods may coincide in producer and relevant public. I also consider that they will overlap in trade channels, however, it is not my view that they will be sold in the same areas of the supermarket. There is a level of competition between the goods, as the average consumer may select one over the other. However, the goods are not complementary. Taking the above into account, I find the goods to be similar to a medium degree.

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<sup>6</sup> *Les Editions Albert Rene v OHIM*, Case T-336/03

## Class 43

*Information and advice relating to the provision of food and drink; Provision of information relating to the preparation of food and drink.*

31. The opponent compares the term “Provision of information relating to the preparation of food and drink” with “services for providing food, drink [...]” in the opponent’s specification. Though both services above, broadly speaking, concern the provision of food and drink, when compared to the opponent’s services, the respective uses are different, with one providing the consumable goods and the other providing information and advice. To a degree, the services will likely be accessed by the same users; an individual or organisation requiring the provision of food and drink may at times, as a pre-cursor, liaise with the provider to obtain any relevant information associated with its selection or purchase. However, this will not always be the case. The nature of the services may be distinct but there may be some similarity in the respective trade channels, and they could be offered by a single undertaking. The services are not competitive, and they are not strictly complementary, to the extent that they are indispensable. I find that there is between a low to medium degree of similarity.

32. In relation to the goods and services relied upon in the opposition, I note that the goods and services in the ‘205 and ‘210 mark are identical, therefore, the findings made above would also apply to the ‘205 mark, with no further consideration required. The specification for IR 1646917 is slightly broader than the other marks relied upon in the opposition, for example, it contains: “cheese; butter; yogurts” (in class 29), “Pasta; noodles; chocolate; ice cream; seasonings; preserved herbs” (in class 30), and “preparations for making alcoholic beverages” (in class 33), to name a few. However, from looking at the potential comparisons with the applicant’s specification, the broader specification held by the opponent in relation to this mark would not place the opponent in a better position in the opposition than the mark relied upon in drafting this decision. Consequently, there is no detriment to the opponent in my decision not to consider the IR any further.

## **AVERAGE CONSUMER AND THE PURCHASING PROCESS**

33. 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.

34. In *Iconix Luxembourg Holdings SARL v Dream Pairs 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 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.

35. The average consumer of the goods and services at issue will include members of the general public. However, in relation to the services, I am of the view that the average consumer will also include business users.

36. The average cost of the goods is relatively low, and the frequency of the purchase is relatively high. When selecting the goods, I consider that the average consumer will contemplate factors such as whether they will enjoy the taste/ flavour as well as calorific and nutritional content. In addition, I consider that consumers with medical issues and/or dietary requirements will give more thought to the selection of the goods. The goods at issue will typically be offered by retailers or their online equivalents. It is my view that the selection process will be primarily visual as they will be selected by customers from shelves or cabinets or viewing images on a retailers website, although I do not discount an aural element.

37. When selecting the services, the average consumer will take into consideration factors such as hygiene ratings, reviews from other customers and whether the services will meet their needs. When the average consumer encounters such services, this will be primarily on a visual level, such as signage on premises, websites, newspapers, advertisements, and reviews in the press, either hard copy or online. However, the possibility of aural considerations must also be recognised for various types of hospitality services, such as recommendations.

38. Accordingly, the average consumer will pay a medium degree of attention to the purchasing process of the goods and services.

## **COMPARISON OF THE MARKS**

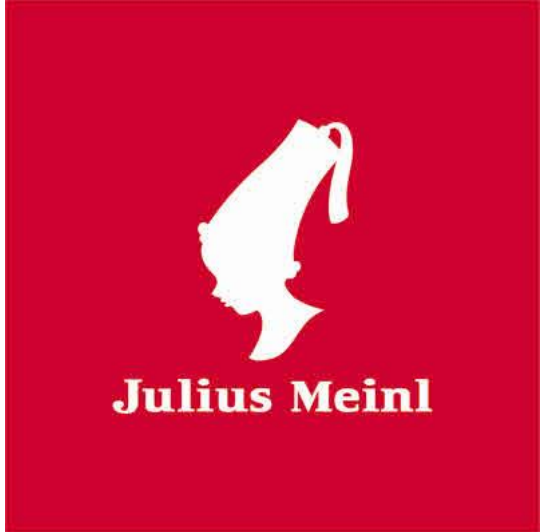
39. It is clear from *Sabel* that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in *Bimbo* 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.”

40. Therefore, it would be wrong to dissect the trade marks artificially, though it is necessary to take into account the distinctive and dominant components of the marks; due

weight must be given to any other features which are not negligible and hence contribute to the overall impressions created by the marks.

41. The marks to be compared are as follows:

The applicant's mark	The opponent's mark
	<p data-bbox="810 495 1342 622">HOUSE OF <b>JULIUS MEINL</b></p>

42. The opponent's mark is a figurative mark that consists of 'House of Julius Meinl'.<sup>7</sup> 'Julius Meinl' is the larger text in the words, and it appears in bold capitalised slightly stylised text, of which the stylisation is unremarkable. Above the text, in a smaller font are the words 'HOUSE OF' which consists of a slightly different font; however, the stylisation remains unremarkable and is not emboldened. Given its larger size and emboldened font, the eye is naturally drawn to the text 'Julius Meinl', which I consider combine together to form a unit, which I find plays a greater role in the overall impression of the mark.

43. The applicant's mark consists of the text 'Julius Meinl' that appears in white. Positioned above the text is a device that appears to be a person wearing a large hat with a tassel; this device is also presented in white. The device and the text are rendered on a red background. The applicant accepted at the hearing that 'JULIUS MEINL' is the distinctive element in the applicant's mark. However, it went onto submit that the device is unusual and it is prominent. Whilst I recognise that the device is large and positioned at the top of the mark, it is my view

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<sup>7</sup> As a word mark, this mark is protected in whatever form, colour or font they are used: see *La Superquimica v EUIPO*, Case T-24/17, paragraph 39.

that, as the eye is naturally drawn to the element of the mark that can be read,<sup>8</sup> the words 'Julius Meinl' play a greater role in the mark, with the device and colour playing lesser roles.

44. Visually, the applicant submitted at the hearing that the marks shared the words 'JULIUS MEINL' and differed in the presence of the device and colour in the applicant's mark and the addition of 'HOUSE OF' in the opponent's mark. I agree that these are all points of difference and similarity, with the added difference of the fonts used in the marks – which I have already found to be unremarkable. Taking all of the above into account, I find the mark to be visually similar to a medium degree.

45. The applicant's submissions concerning points of phonetic similarity aligns with its submissions concerning visual similarity and differences mentioned above. I agree with the applicant that the marks will share the pronunciation of 'JULIUS MEINL' and will differ in the pronunciation of 'HOUSE OF' in the opponent's mark. The colours and device elements of the applicant's mark will not be articulated. Therefore, I consider the marks will be aurally similar to a medium to high degree.

46. The opponent's mark conveys the message of a building or structure belonging to a person called 'JULIUS MEINL' or in the alternative, in a less literal interpretation, it could be seen as relating to a group of people or organisation headed by an individual named JULIUS MEINL. 'JULIUS MEINL' will readily be understood as a male forename and a surname.

47. There is conceptual overlap to the extent that both marks include the words 'JULIUS MEINL', which will be understood to be a forename and a surname. However, the marks will differ conceptually in that the opponent's mark will be understood to be a building or structure belonging to a person called 'JULIUS MEINL' or a group of people or organisation headed by an individual named 'JULIUS MEINL'. Whereas the applicant's mark will be understood to relate to a person called 'JULIUS MEINL'. Overall, I consider that the marks are conceptually similar to a medium degree.

48. The remainder of the earlier marks relied upon in the opposition would not place the opponent in a better position than the comparison that has been made above. This is because all of the opponent's marks are word marks, other than the '210 mark which is a figurative mark of which the text is slightly stylised, there would be no impact on outcome or the comparison, especially as I have found that the stylisation is unremarkable. Consequently, there will be no detriment to the opponent in my decision not to consider these other marks in this decision.

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<sup>8</sup> *MigrosGenossenschafts-Bund v EUIPO*, T-68/17,

## DISTINCTIVE CHARACTER OF THE EARLIER MARK

49. In *Lloyd Schuhfabrik Meyer*, the CJEU stated that:

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-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. Registered trade marks possess varying degrees of inherent distinctive character. The degree of distinctiveness is an important factor as it directly relates to whether there is a likelihood of confusion; the more distinctive the earlier mark, the greater the likelihood of confusion. The distinctive character of a mark may be enhanced as a result of it having been used in the market.

51. As the distinctiveness of the common element is key to my assessment, I will begin by making a finding as to the distinctiveness of the name ‘JULIUS MEINL’.<sup>9</sup> The distinctiveness of the forename and surname will be affected by how common it is (or is not, as the case may be).<sup>10</sup> In my view, the name ‘JULIUS’ is likely to be recognised as a common forename in the UK; however, the surname ‘MEINL’ will not. Consequently, I find that this element collectively

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<sup>9</sup> *Kurt Geiger v A-List Corporate Limited*, BL O-075-13

<sup>10</sup> *Harman International Industries, Inc v OHIM*, Case C-51/09P

is inherently distinctive to a medium degree. Turning to the earlier mark as a whole, the words 'JULIUS MEINL' is the more distinctive element of the marks, I do not consider that 'HOUSE OF' adds anything material to the distinctive character above what I have found in relation to the name, therefore, the mark is inherently distinctive to a medium degree. No evidence has been filed in support of enhanced distinctiveness of the mark; therefore, I do not consider there to be any enhanced distinctive character.

52. As mentioned previously, there will be no detriment to the opponent in my decision not to consider these other marks in this decision. This is because my findings above in relation to the distinctiveness would also apply to the other marks.

### **LIKELIHOOD OF CONFUSION**

53. Making an assessment of the likelihood of confusion is a matter of considering the relevant factors from the viewpoint of the average consumer of the goods and services at issue and determining whether they are likely to be confused. When doing this, I am required to bear in mind that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely on the imperfect picture of them that they have in their mind. This means that the global assessment emulates what happens in the mind of the average consumer on encountering the later mark with an imperfect recollection of the earlier mark. The courts have not said what weight should be attached to each of the factors or provided a formula that can be applied to any set of circumstances. However, I am required to take account of the interdependency principle, i.e. that 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 or vice versa.

54. Earlier in my decision, I found the marks to be visually and conceptually similar to a medium degree. I have found the marks to be aurally similar to a medium to high degree. I have found the opponent's mark to be inherently distinctive to a medium degree. I have found the average consumer group to comprise of members of the general public and business users. I have found the degree of attention to be medium and that the purchasing process will be primarily visual, although I cannot discount aural considerations. I have found the degree of similarity for the goods at issue to vary from identical and similar to a very low degree.

55. There are two types of confusion that may occur. Direct confusion is where the average consumer mistakes one mark for the other, while indirect confusion is where the average consumer recognises that the marks are different, but assumes that the later mark also

identifies the goods and services of the owner of the earlier mark, or that the two undertakings are related: see *L.A. Sugar Limited v Back Beat Inc*, BL O/375/10, paragraph 16.

56. In my view, there is no risk of one mark being mistaken for the other. This is because there are clearly sufficient differences between the marks being: the device, the colour and the additional words 'HOUSE OF' which appear at the beginning of the opponent's mark where the average consumer tends to pay more attention. These differences will not be overlooked, and they will not be misremembered. Accordingly, there is no likelihood of direct confusion.

57. Proceeding to consider a likelihood of indirect confusion, I am reminded of the case of *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, wherein Mr Iain Purvis Q.C., as the Appointed Person, explained that:

"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)."

58. I note the case of *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, wherein Arnold LJ referred to the comments of James Mellor Q.C. (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (BL O/219/16), where he said at paragraph 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.

59. Turning to consider indirect confusion, given the shared use of an uncommon name which I found to be the most dominant and impactful element of the marks, I am satisfied that the average consumer would be indirectly confused when confronted by the marks at issue. I say this because combining the common elements with the less distinctive elements of 'HOUSE OF' and the slight unremarkable stylisation (in the opponent's mark) alongside the device and colour (in the applicant's mark), they are likely to indicate to the average consumer different marks that are used by the same undertaking as a sub-brand or brand extension of the contested mark, or vice versa. I consider that the opponent's mark will be perceived as the parent company/brand and the application will be perceived as the sub-brand. In addition, vice versa, applying the same reasoning previously, the opponent's mark can be perceived as a brand extension of the applicant's mark. This finding will encompass the goods and services that I have found to be similar to a low degree. However, it does not apply to goods that I have found to be similar to a very low degree.

## **FINAL REMARKS**

60. As I have found a likelihood of confusion in relation to the applicant's mark and the opponent's '210 mark, there is no additional benefit to me considering the remaining marks relied upon in the opposition for the reasons I have mentioned in the decision. Accordingly, there is no requirement for this decision to be made on a provisional basis.

## **CONCLUSION**

61. The opposition under section 5(2)(b) has been partially successful. The applicant's mark is, subject to any appeal against this decision, refused registration for the following goods:

Class 29: Fruit preserved in alcohol; Fruit-based snack food; Cooked fruits; Preserved fruits; Crystallized fruits; Edible oils; Edible fats; Jams; Marmalade; Milk; Milk beverages, milk predominating; Milk products; Milk shakes.

Class 30: Coffee, tea, cocoa, artificial coffee, flour and preparations made from cereals; bread, pastry and confectionery (including frozen pastry and confectionery); ices; honey, treacle; yeast, baking powder; spices; long-life pastries; blancmange and blancmange in the form of powders; dessert creams; fruit sauces.

Class 43: Services for providing food and drink; Information and advice relating to the provision of food and drink; Provision of information relating to the preparation of food and drink; Provision of food and drink; Food and drink catering; Bar services; Cafeteria services; Café services.

62. The following goods will proceed to registration:

Class 30: Sugar

## **COSTS**

63. As the opponent has had the greater degree of success, it is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 1/2023. The award is calculated as follows:

Preparing a statement and considering the other side's statement	£300
Preparing submissions and considering the applicant's evidence	£600
Official fee	£100
<b>Total</b>	<b>£1000<sup>11</sup></b>

64. I therefore order Excellent Brands JMI Limited to pay Julius Meinl the sum of £1000. This sum is to be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

**Dated this 1st Day of June 2026**

**A KLASS**

**For the Registrar**

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<sup>11</sup> The opponent did not attend the hearing and accordingly the costs award reflects this.

## **Annex A**

Class 29: meat; fish; poultry; game; meat extracts; preserved fruits; preserved vegetables; frozen fruits; frozen vegetables; dried fruit; vegetables, dried; cooked fruits; vegetables, cooked; jellies; eggs; cheese; butter; yoghurts; oils for food; edible fats.

Class 30: rice; pasta; noodles; tapioca; sago; flour; preparations made from cereals; bread; pastries; pastry; chocolate; ice cream; sherbets [sorbetes] other kinds of edible ices; treacle; yeast; baking powder; salt; seasonings; spices; preserved herbs; vinegar; sauces; seasonings; ice [frozen water].

Class 32: Beers; non-alcoholic beverages; mineral water [beverages]; aerated waters; fruit drinks; juices; syrups for making beverages; non-alcoholic preparations for making beverages.

Class 33: alcoholic beverages (except beers); preparations for making alcoholic beverages.

Class 35: advertising; business management; office functions; retail services, wholesale services and mail order retail services connected with the sale of non-medical cosmetics, non-medical preparations for the body and beauty care, non-medical dentifrices, perfumery, essential oils, candles, eyeglasses and sunglasses and cases, software of all kinds and magnetic data media; retail services, wholesale services and mail order retail services connected with the sale of cases and covers for smartphones, headphones, stationery, photographs, packaging materials, apparatus and installations for lighting, heating, cooling, steam generating, cooking, drying, ventilating, water supply and sanitary purposes, luggage, carrying bags, purses, umbrellas, walking and mountaineering sticks; retail services, wholesale services and mail order retail services connected with the sale of clothing for pets, covers for animals, collars and leashes for animals, saddlery and bridles for animals, equipment and containers for household and kitchen use containers, combs, sponges, scrubber and brushes, except paint brushes; retail services, wholesale services and mail order retail services connected with the sale of brush-making materials, cleaning articles, glassware porcelain articles and earthenware, containers for the storage and for transportation, table cutlery, razors, hair curling implements, pocket knives, manicure and pedicure kits, cooking pot sets, household linen, clothing, footwear, headwear, food and beverages; marketing services; merchandising (sales promotion); business consultancy; compilation and systematisation of information electronic databases; development and conducting of bonus, discount, voucher and reward schemes and systems for marketing

purposes; price comparison services; rental of advertising space on the internet (banner exchange).

Class 43: services for providing of food and drink; temporary accommodation; booking and reservation services for accommodation and restaurants; catering; bar.

## **Annex B**

Class 29: meat, fish, poultry and game; meat extracts; preserved, frozen, dried and cooked fruits and vegetables; jellies; eggs; edible oils and fats.

Class 30: rice; tapioca and sago; flour and preparations made from cereals, bread, pastry and confectionery; ices; treacle; yeast, baking-powder; salt; mustard; vinegar, sauces (condiments); spices; ices; sweetmeats (candy).

Class 32: beers; mineral and aerated waters and other non-alcoholic beverages; fruit beverages and fruit juices; syrups and other preparations for making beverages.

Class 33: alcoholic beverages (except beers).

Class 35: advertising; business management; business administration; office functions; payroll preparation, cost price analysis, commercial information agencies, business management and organisation consultancy, book-keeping, auditing, computerized file management, systemization and compilation of information into computer databases, business appraisals, efficiency experts, marketing, marketing studies, economic forecasting; commercial information services and consumer information services; franchising, namely, services rendered by a franchise or, namely assistance in the business management and administration of commercial or industrial businesses; retail services, namely in connection with cosmetics, soaps, perfumeries, essential oils, cosmetic products, hair lotions, leather and leather imitations, bags made of leather and imitations of leather, artificial leather, (chamois-) leather (not for cleaning purposes), leather (unworked and semi-worked), trimmings of leather for furniture and seats, leather twists, bands of leather, leather leashes, leather board, straps of leather (saddlery), leather laces, valves of leather, straps for soldiers' equipment, animal skins, hides, trunks and travelling bags, umbrellas and parasols, walking sticks, whips, harness and saddlery, furniture, mirrors, picture frames, fixtures and fittings, household goods, textiles, clothing, shoes, food, drinks and tobacco goods; retail services in connection with

objects of art and antiques; market analysis concerning availability and sale of objects of art and antiques.

Class 43: services for providing food, drink and temporary accommodation.

## **Annex C**

Class 29: Class 29: meat, fish, poultry and game; meat extracts; preserved, frozen, dried and cooked fruits and vegetables; jellies; eggs; edible oils and fats.

Class 30: rice; tapioca and sago; flour and preparations made from cereals, bread, pastry and confectionery; ices; treacle; yeast, baking-powder; salt; mustard; vinegar, sauces (condiments); spices; ices; sweetmeats (candy).

Class 32: beers; mineral and aerated waters and other non-alcoholic beverages; fruit beverages and fruit juices; syrups and other preparations for making beverages.

Class 33: alcoholic beverages (except beers).

Class 35: advertising; business management; business administration; office functions; payroll preparation, cost price analysis, commercial information agencies, business management and organisation consultancy, book-keeping, auditing, computerized file management, systemization and compilation of information into computer databases, business appraisals, efficiency experts, marketing, marketing studies, economic forecasting; commercial information services and consumer information services; franchising, namely, services rendered by a franchise or, namely assistance in the business management and administration of commercial or industrial businesses; retail services, namely in connection with cosmetics, soaps, perfumeries, essential oils, cosmetic products, hair lotions, leather and leather imitations, bags made of leather and imitations of leather, artificial leather, (chamois-) leather (not for cleaning purposes), leather (unworked and semi-worked), trimmings of leather for furniture and seats, leather twists, bands of leather, leather leashes, leather board, straps of leather (saddlery), leather laces, valves of leather, straps for soldiers' equipment, animal skins, hides, trunks and travelling bags, umbrellas and parasols, walking sticks, whips, harness and saddlery, furniture, mirrors, picture frames, fixtures and fittings, household goods, textiles, clothing, shoes, food, drinks and tobacco goods; retail services in connection with

objects of art and antiques; market analysis concerning availability and sale of objects of art and antiques.

Class 43: services for providing food, drink and temporary accommodation.