

O/0751/25

TRADE MARKS ACT 1994

**IN THE MATTER OF TRADE MARK APPLICATION NO. 3848732
BY REQUINTE BRAZIL LTD**

IN RESPECT OF THE TRADE MARK:

Requinte Brazil

IN CLASSES 29, 30, 35, 39 AND 43

AND

**IN THE MATTER OF THE OPPOSITION THERETO
UNDER NO. 439008
BY PIOTTO LTD**

BACKGROUND AND PLEADINGS

1. On 11 November 2022, Requite Brazil Ltd (“the applicant”) applied to register the trade mark shown on the cover page of this decision (“the contested mark”) in the UK. The application was published for opposition purposes on 25 November 2022, and registration is sought for goods and services in classes 29, 30, 35, 39 and 43 (see annex for the full list of goods and services).

2. On 2 February 2023, PIOTTO LTD (“the opponent”) filed a notice of opposition. The opposition was brought under section 5(2)(b) of the Trade Marks Act 1994 (“the Act”),¹ and was directed at some of the goods and services in the application.²

3. The opponent relies upon its UK trade mark number 3845118, for the trade mark ‘REQUINTE BRAZIL MEAT MARKET’ (“the earlier mark”), which was applied for on 2 November 2022 and entered in the register on 20 January 2023. The opponent relies upon all its goods and services in classes 29, 30, 35, 40 and 43.³

4. The opponent claims that the marks are near identical and that the respective goods and services are identical or highly similar, resulting in a likelihood of confusion on the part of the relevant public, which includes a likelihood of association.

5. The applicant filed a defence and counterstatement admitting similarity between the marks and the respective goods and services.

6. The opponent’s mark qualifies as an earlier mark under section 6(1) of the Act. As it had not completed its registration procedure more than five years before the application date for the contested mark, it is not subject to the use provisions contained in section 6A of the Act. Consequently, the opponent may rely upon all the goods and

¹ 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. See also Tribunal Practice Notice (“TPN”) 2/2020 End of Transition Period – impact on tribunal proceedings.

² See goods and services comparison.

³ See goods and services comparison.

services for which the earlier mark is registered without having to establish genuine use.

7. The opponent is represented by Gunnercooke LLP, whereas the applicant represents itself.

8. Both parties filed evidence. Neither party requested a hearing, nor did they file written submissions in lieu of a hearing. This decision is taken following a careful review of the papers.

EVIDENCE

9. The opponent filed evidence in the form of the witness statement of Fernando Roberto Piotto, dated 4 April 2024. Mr Piotto is the Director of the opponent. The witness statement is accompanied by 1 exhibit (Exhibit FRP1). The exhibit contains a screenshot taken from the Cambridge Portuguese–English Dictionary (online), showing that ‘requinte’ is a Portuguese word meaning ‘refinement’ in English. Whilst this evidence is of little relevance to my overall assessment, I will make an assessment later in this decision regarding the distinctiveness of this word.

10. The applicant filed evidence in the form of the joint witness statement of Janine Lisboa Gusmao and Wendell Fernando do Couto Silva, dated 31 July 2024, which is accompanied by 7 exhibits (Exhibits JL1-JL7). Ms Gusmao and Mr Silva are Directors of the applicant. The contents of the exhibits are summarised as follows:

- An image of a shop front showing the words ‘REQUINTE BRAZIL’ on signage above the shop and at floor level around the outside seating area. The image is undated. (Exhibit JL1)
- Screenshot of an Instagram page showing the words ‘REQUINTE BRAZIL’ used in relation to a supermarket/convenience store. The exhibit is undated. (Exhibit JL1)

- Invoice - from 'Nhac Brazilian Food Ltd', Surrey, addressed to 'Mr Wendell' at 'Requinte Brasil' London. The invoice is for the sum of £199.78 and is in respect of three products. However, apart from 'cheese bread small and frozen', the goods are not shown in English. The invoice is dated 3 June 2024, which is after the relevant date being the filing date of the trade mark application. (Exhibit JL1)
- Invoice - from 'GENERAL MILLS', Brazil to 'REQUINTE BRAZIL IMPORT & EXPORT LTD', (London). The invoice is in respect of the following goods: Popcorn, bread, bulgar wheat, peanut, cream of onion, chicken vegetable pasta soup, beef vegetable pasta soup, yellow hominy, crista hominy, ground hominy, and various tea product. The unit cost and total cost of the products has been redacted from the invoice. The invoice is dated 27 August 2020. (Exhibit JL2)
- Invoice - from 'Sumol Compal' Portugal to 'REQUINTE BRAZIL IMPORT & EXPORT LTD' (London). The invoice is in respect of various food products however, these products are not shown in English and a translation has not been provided. The total amount of the invoice is 8.598,04 euros. The invoice is dated 12 July 2024, which is after the relevant date. (Exhibit JL2)
- Import invoice - from 'CDS import', regarding the exporter 'GENERAL MILLS BRASIL LDA' (Brazil) to 'REQUINTE BRAZIL IMPORT & EXPORT LTD', (London). It is not clear from this document what was being imported/exported, though the total price of the invoice is 1404.63 (USD). The import invoice is dated 23 July 2024, which is after the relevant date. (Exhibit JL2)
- 'TV Record Europe reward' announcement. The details contained in the document are not produced in English and a translation has not been provided, therefore it is unclear what it actually refers to. The applicant's name or trade mark does not feature in the document. I note that the document appears to relate to 2024 and 2025, which is after the relevant date. (Exhibit JL3)

- Invoice – from ‘REDE RECORD DE TELEVISAO – EUROPA, S.A., Portugal’ to ‘REQUINTE BRAZIL IMPORT & EXPORT LTD’ (London). The contents of the invoice have not been produced in English and a translation has not been provided so it is unclear what the invoice is in relation to. The total amount of the invoice is 1,040.00 euros. The invoice is dated 17 July 2024, which is after the relevant date. (Exhibit JL3)

- Screenshot featuring the trade mark  (the trade mark applied for is ‘Requite Brazil’). The screenshot features a photograph of various dishes containing prepared food products. Accompanying the photograph are the words ‘HERE, YOU’LL FIND THE FINEST BRAZILIAN PRODUCTS’, ‘SHOP NOW’, ‘Expanding Horizons with Brazilian Products’ and ‘We Connect Brazilian Suppliers With Companies In Europe, Providing Access To A Variety Of Genuine And High-Quality Products - From requitebrazil.com’. The screenshot is undated. (Exhibit JL3)

- Screenshots featuring the trade marks:



Each of the screenshots feature the following QR code:



However, whilst this evidence is titled ‘Media/adds’ it is unclear what the screenshots are intended to represent, where they originate from and where they were made available. Furthermore, the screenshots are undated and do not relate to the mark applied for. (Exhibit JL3)

- Photographs of 'Yoki' food packaging (food products unknown). A label on the packaging features the words (in very small print), 'Imported and distributed by 'Requinte Brazil Import & Export Limited'. The products feature dates ranging between June 2024 to January 2025. These dates are after the relevant date, though I acknowledge that they are probably the 'use by' dates of the products. (Exhibit JL4)

- Four invoices all originating from 'Requinte Brazil Import & Export' addressed to various UK addresses. The invoices feature the trade mark:



and the website address 'www.requintebrazil.com'. The invoices are in respect of various food products, namely cassava, corn flour, starch, crisps, bulgur wheat, seasoned corn, beans, chickpeas, tapioca, and apple, peach, mango and pineapple products. The invoices total £12,183.20. The dates of the invoices range between 27 June 2024 and 8 August 2024. These are all after the relevant date. (Exhibit JL5)

- A photograph featuring shelving in what I assume to be a retail premises. The shelves are stocked with food items though it is not clear what these food items are. I can only see the brand name 'Yoki' on the products. It is not clear from the photograph which store it was taken at or the location of the store. The photograph is undated. (Exhibit JL6)

- A photograph of a small black car featuring the following trade mark and website



address: . However, it is not clear where the undated photograph was taken. (Exhibit JL6)

- Invoice - from 'Requinte Brazil Import & Export' to 'Fernando Roberto Piotto' (the opponent) in relation to the following food products: Beans, onion cream, chocolate, breadcrumbs, corn flour, passion fruit, pineapple, orange, peanuts, and potato sticks. The invoice total is £373.07. The date of the invoice is 16 December 2020.

11. In their joint witness statement Ms Gusmao and Mr Silva state that the applicant has been trading since March 2016 and that 'Requinte Brazil Import and Export' (referred to in some of the exhibits) has been trading since September 2017, and that the applicant has been using the trade mark at issue, 'Requinte Brazil' since 2016. They explain that the applicant first started as a café and grocery store, specialising in Brazilian and Portuguese foodstuffs including various meat products and groceries.

12. They explain that in 2017 the applicant started importing Brazilian and Portuguese foods as a wholesale, attending to the demands of local businesses, such as restaurants, supermarkets and grocery shops in the UK and Europe. They add that the applicant imports approximately three to four containers of food to the UK every month under the 'Requinte Brazil Import and Export' trade mark.

13. Ms Gusmao and Mr Silva state that the applicant has been recognised as the top Brazilian and Portuguese food importers in the UK for the years 2023-2024, by RECORD TV (a Brazilian TV channel available in Europe and the UK). They add that in 2023 the applicant spent approximately £11,000 on advertising.

14. Ms Gusmao and Mr Silva state that following the success of 'Requinte Brazil Import and Export' and 'Requinte Brazil LTDA' the applicant decided to expand to 'Requinte Brazil Meat and Market' being more specialised in butchery, groceries and foods.

15. They add that in the applicant's Form TM8 and counterstatement it was admitted that the goods and services at issue are similar to the opponent's goods and services. However, they state that this is due to the opponent, who was previously a customer of the applicant, providing the same products and services as those provided by the applicant since 2016. They state that this is an act of 'bad will' on the part of the opponent who now also operates a business under a 'Requinte' trade mark, thus creating a likelihood of confusion.

16. It is clear from the evidence submitted that the applicant has used the mark in relation to the majority of the goods and services at issue. However, I note that the many of the applicant's exhibits are either undated or are dated outside the relevant

period. Furthermore, the evidence relates to various trade marks, in addition to the one at issue. Additionally, in their witness statement, I note that Ms Gusmao and Mr Silva focus upon the applicant's prior use of the applied for mark (since 2016). However, for the avoidance of doubt, the fact that the applicant claims to have used its mark prior to the opponent's mark being applied for/registered, is not a defence in law to an opposition under section 5(2)(b). Tribunal Practice Notice 4/2009 explains this as follows:

"The position with regard to defences based on use of the trade mark under attack which precedes the date of use or registration of the attacker's mark.

4. The viability of such a defence was considered by Ms Anna Carboni, sitting as the appointed person in *Ion Associates Ltd v Philip Stainton and Another*, BL O-211-09. Ms Carboni rejected the defence as being wrong in law.

5. Users of the Intellectual Property Office are therefore reminded that defences to section 5(1) or (2) grounds based on the applicant for registration/registered proprietor owning another mark which is earlier still compared to the attacker's mark, or having used the trade mark before the attacker used or registered its mark are wrong in law. If the owner of the mark under attack has an earlier mark or right which could be used to oppose or invalidate the trade mark relied upon by the attacker, and the applicant for registration/registered proprietor wishes to invoke that earlier mark/right, the proper course is to oppose or apply to invalidate the attacker's mark."

17. The applicant has not sought to invalidate the opponent's mark based on a claim to an earlier unregistered right. Section 72 of the Act provides that registration shall be taken as prima facie evidence of the validity of a registered trade mark. The opponent's mark must, therefore, be regarded as validly registered and, in these circumstances, the law requires priority to be determined according to the filing dates of the applications for registration. This means that the opponent's mark has priority. Accordingly, whilst the contents of the applicant's witness statement and evidence have been duly noted, I do not consider it necessary to make any further reference to the evidence in my decision.

DECISION

Section 5(2)(b): legislation and case law

18. Section 5(2)(b) of the Act read 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.”

19. Section 5A states:

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

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

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

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

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

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

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

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

(g) a lesser degree of similarity between the goods or services may be offset by a 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;

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

Comparison of goods and services

21. In *Canon*, Case C-39/97, the CJEU stated that:

“23. In assessing the similarity of the goods or services concerned, ... 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. Additionally, the factors for assessing similarity between goods and services identified in *British Sugar Plc v James Robertson & Sons Limited* (“*Treat*”) [1996] R.P.C. 281 include an assessment of the users and the channels of trade of the respective goods or services.

23. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods and services. In *Boston Scientific Ltd v OHIM*, Case T-325/06, the General Court (“GC”) stated that “complementary” means:

“82. ...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”.

24. For the purposes of considering the issue of similarity of goods and services, it is permissible to consider groups of terms collectively where appropriate: *Separode Trade Mark*, BL O-399-10.⁴

25. In the case of goods and services, the terms used should not be interpreted widely but confined to the core of the possible meanings attributable to the terms: *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1) [2024] UKSC 36*, at [365].

26. It is noted that a comparison of the respective specifications was not provided by the opponent. Accordingly, taking guidance from Iain Purvis KC, sitting as Appointed Person in the *SmartX* trade mark decision,⁵ as the opponent has not provided a comparison between the goods and services at issue, I will proceed to make my own. As per *Separode*, I will approach the comparison of the goods and services at issue by grouping them collectively in as few groups as I consider logical. Further, where the terms listed are particularly wide or vague, I will endeavour to follow the principles outlined in *Skykick* by comparing what I consider to be the core meaning of the goods and services, without affording them neither a too liberal, nor an artificially narrow, interpretation.

27. Pursuant to section 60A of the Act, I am mindful of the fact that the goods and services are not to be automatically regarded as being similar to each other on the ground that they appear in the same class, nor automatically regarded as dissimilar from each other on the ground that they appear in different classes. I also note that in *Unicorn Studio Inc v Veronese* Case CH-2023-000214, Iain Purvis, KC, sitting as deputy High Court judge, stated that any finding of similarity (between goods and services) requires the exercise of common sense.

28. I remind myself that in its defence and counterstatement the applicant admitted similarity between the respective goods and services. However, as the applicant did

⁴ Paragraph 5.

⁵ BL O/0911/24, at [32].

not specifically comment on the level of similarity, I will proceed to conduct my own comparison.⁶

29. The competing goods and services are as follows:

The applicant's goods and services

Class 29

Meat; Meats; Meat and meat products; Smoked meats; Fresh meat; Salted meat; Meat [preserved]; Salted meats; Frozen meat products; Steaks of meat.

Class 30

Foods (Farinaceous -).

Class 35

Retail services relating to bakery products; Retail services in relation to foodstuffs; Retail services in relation to coffee.

Class 39

Delivery of food; Transport of food; Distribution [transport] of retail goods.

Class 43

Food preparation.

The opponent's goods and services

Class 29

Meat; Meats; Meat and meat products; Smoked meats; Meat spreads; Fresh meat; Meat extracts; Quenelles [meat]; Meats (Salted -); Lyophilised meat; Prepared meat; Processed meat; Sliced meat; Meat preserves; Cooked meat; Meat substitutes; Meat jellies; Tinned meat; Meat, canned; Meat, tinned; Preserved meat; Meat, preserved; Packaged meats; Cooked meats; Luncheon meats; Turkey meat; Meat burgers; Meat

⁶ BEAK BL O/0096/25 at [20] and ARD BL O/0245/25 at [15].

extract; Meat, frozen; Salted meat; Dried meat; Lyophilized meat; Fried meat; Tinned meats; Meat [preserved]; Meat floss; Cured meats; Duck meat; Roast meat; Meat stocks; Minced meat; Ground meat; Meat paste; Meat gelatines; Frozen meat; Sausage meat; Salted meats; Canned meat; Crab meat; Bullfrog meat; Donkey meat; Meat pate; Prepared meals made from meat [meat predominating]; Minced meat [chopped meat]; Frozen meat products; Processed meat products; Prepared meat dishes; Freeze-dried meat; Dried fish meat; Dried whelk meat; Shrimp meat floss; Fish meat floss; Cooked meat dishes; Extracts of meat; Bottled cooked meat; Dried clam meat; Steaks of meat; Canned cooked meat; Meat-based mousses; Imitation crab meat; Seitan [meat substitute]; Meat boiled down in soy sauce (tsukudani meat); Meat, tinned [canned (Am.)]; Vegetable-based meat substitutes; Meat-based snack foods; Dried razor clam meat; Meat-based snack food; Pie fillings of meat; Galbi [grilled meat dish]; Food pastes made from meat; Cabbage rolls stuffed with meat; Soups and stocks, meat extracts; Prepared dishes consisting principally of meat; Frozen meals consisting primarily of meat; Prepared meals consisting primarily of meat; Ready cooked meals consisting primarily of meat.

Class 30

Pies (Meat -); Meat pies; Meat gravies; Gravies (Meat -); Sandwiches containing meat; Pies containing meat; Non-meat pies; Meat pies [prepared]; Flavourings made from meat; Sauces for barbecued meat; Crackers flavoured with meat; Meat tenderizers, for household purposes; Poultry and game meat pies; Pelmeni [dumplings stuffed with meat]; Meat tenderizers for household purposes; Frozen pastry stuffed with meat; Meat tenderizers for culinary purposes; Pastries consisting of vegetables and meat; Seasoned coating for meat, fish, poultry.

Class 35

Retail services relating to food; Unmanned retail store services relating to food; Retail services relating to food preparation implements; Retail services in relation to food cooking equipment.

Class 40

Butchery.

Class 43

Cafe services; Coffee shops; Coffee shop services; Restaurants; Restaurant services; Grill restaurants; Delicatessens [restaurants]; Fast food restaurants; Carvery restaurant services; Fast-food restaurant services; Bar and restaurant services; take-away restaurant services; Restaurant and bar services; Take-away restaurant services; Provision of food and drink in restaurants; Serving food and drink for guests in restaurants; Serving food and drink in restaurants and bars; Reservation and booking services for restaurants and meals; Providing food and drink for guests in restaurants; Providing food and drink in restaurants and bars; Restaurant services for the provision of fast food.

Class 29 of the contested application

Meat; Meats; Meat and meat products; Smoked meats; Fresh meat; Salted meat; Meat [preserved]; Salted meats; Frozen meat products; Steaks of meat

30. The above contested terms appear identically in the specification of the earlier mark.

Class 30 of the contested application

Foods (Farinaceous -)

31. Farinaceous foods is a broad term relating to starchy foods derived from grains and tubers, such as rice, sago, tapioca, maize, wheat, flour, etc., and include food products such as pastries and other baked goods which are primarily made from flour. Accordingly, I find that the contested goods encompass, *Pies (Meat -); Meat pies; Pies containing meat; Non-meat pies; Meat pies [prepared]; Flavourings made from meat; Poultry and game meat pies; Frozen pastry stuffed with meat; Pastries*, contained in the specification of the opponent's earlier mark. Therefore, these goods are considered identical in line with the principle set out in *Meric*.

Class 35 of the contested application

Retail services relating to bakery products; Retail services in relation to foodstuffs

32. The above contested services are included in the broad term *Retail services relating to food*, contained in the specification of the earlier mark, and therefore are considered identical in line with the principle set out in *Meric*.

Retail services in relation to coffee

33. I keep in mind that *retail services* of specific goods and retail services of other goods have the same nature as both are *retail services*, the same purpose of allowing consumers to conveniently satisfy different shopping needs, and the same method of use. As such, similarity is found between those *retail services* where the specific goods concerned are commonly retailed together in the same outlets and they target the same public. However, the degree of similarity between retail of specific goods on the one hand and retail of other goods on the other hand may vary depending on the proximity of the retailed goods and the particularities of the respective market sectors. Furthermore, the dissimilarity between specific goods involved in the retail services concerned does not automatically mean that the retail services themselves are dissimilar too. A degree of similarity may still be found if, because of the particularities on the market, such dissimilar goods are retailed together in the same places and target the same public.

34. Accordingly, I am of the view that there is an overlap between the contested *retail services in relation to coffee*, and *retail services relating to food*, contained in the specification of the earlier right. The retailed goods at issue, being *coffee* and *food* are commonly retailed together in the same outlets, such as supermarkets and convenience stores, etc., and are often sold in close proximity to each other. Furthermore, they can target the same public. Therefore, I consider there to be an overlap in users, purpose and channels of trade, such that I find the services to be similar to a high degree.

Class 39 of the contested application

Delivery of food

35. Although the nature and method of use of the applicant's services differ from the class 43 services contained in the specification of the earlier mark, I find that there is an overlap in user. Furthermore, in my experience it is not uncommon for restaurants, for example, to provide their own food and drink delivery service. This therefore results in an overlap in trade channels. Whilst I acknowledge that the core purpose of the respective services is different (preparing/providing the food on one hand and solely delivering of food on the other), there is a degree of competition between them. This is because a consumer, may decide to have food delivered to their home rather than choosing to visit a restaurant, or vice versa. Accordingly, I find that there is a medium degree of similarity between the respective services.

Distribution [transport] of retail goods; Transport of food

36. The earlier mark includes *retail services relating to food* in class 35. As such, I find that the nature, method of use and intended purpose of these services and the contested services above will differ. However, I consider that users, such as those running supermarkets, will likely be shared. Further, I consider that parties offering the wholesale of food goods to large supermarkets, for example, may also offer the services for the distribution/transport of goods, such as food. Accordingly, I find that trade channels may overlap. However, I do not consider the services to be strictly complementary. Overall, I consider that there is a low degree of similarity between the contested services and the *retail services relating to food* contained in the earlier mark.

Class 43 of the contested application

Food preparation

37. In general, food preparation refers to the process of handling, cleaning and cooking food with the main goal being to transform basic ingredients into a meal. As such, food preparation is essential for food businesses, such as restaurants, etc. Therefore, I

consider that the opponent's *Cafe services; Coffee shops; Coffee shop services; Restaurants; Restaurant services; Grill restaurants; Delicatessens [restaurants]; Fast food restaurants; Carvery restaurant services; Fast-food restaurant services; Bar and restaurant services; take-away restaurant services; Restaurant and bar services; Take-away restaurant services; Provision of food in restaurants; Serving food for guests in restaurants; Serving food in restaurants and bars; Providing food for guests in restaurants; Providing food in restaurants and bars; Restaurant services for the provision of fast food*, contained in class 43 of the earlier mark fall within the broader category of the contested *food preparation*. These services are therefore identical under the principle outlined in *Meric*.

The average consumer and the nature of the purchasing act

38. 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 (see *Lloyd Schuhfabrik Meyer*, Case C-342/97).

39. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

“60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

40. The general food goods and the services for providing food and drink will be targeted primarily at the general public. I consider that flavour, quality and possibly origin will likely be considered by the consumer when purchasing food or food

services, and as such a medium level of attention is likely to be paid in respect of the same. I note that in respect of the food goods there will also be a group of professional consumers including retail store owners and restaurant owners, for example, and these consumers may pay a slightly higher than medium level of attention when purchasing these items due to the increased liability involved in passing them on to their own customers, and the impact the goods purchased may have on their business.

41. In respect of food transport services, the consumer will primarily be professionals, including those looking to stock retail stores, for example. These consumers will likely pay a slightly higher than medium level of attention, as it will be essential to these businesses that any food passed on to the consumer has been transported in the correct conditions to avoid damage to the goods and wasted profits, or the potential to become liable for making consumers unwell by providing food that has been transported incorrectly.

42. The general food goods and the services for providing food and drink will likely be purchased visually, either being displayed on the shelves of retail stores, or advertised on shop frontages, menus, or via website advertisements, etc. In addition, I consider the food transport services may also be primarily advertised visually on websites or via brochures. However, I bear in mind that the goods and services may sometimes be the subject of word-of-mouth recommendations and therefore aural considerations are also borne in mind.

Comparison of the marks

43. It is clear from *Sabel BV v. Puma AG* that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by them, bearing in mind their distinctive and dominant components. The CJEU stated in *Bimbo SA v OHIM*, that:

“34. [...] 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.”

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

45. The trade marks to be compared are as follows:

The opponent's mark	The applicant's mark
REQUINTE BRAZIL MEAT MARKET	Requinte Brazil

Overall impression

46. The marks at issue are plain word marks. In *LA Superquimica v European Union Intellectual Property Office (EUIPO)*, Case T-24/17, the GC held that such plain word marks protected the word or words contained in the mark in whatever form, colour or typeface.⁷ Therefore, the fact that the applicant's mark is sought to be registered in title case, and the earlier mark is registered in upper case, is not relevant for the purposes of my comparison.

47. The opponent's mark consists of the words 'REQUINTE BRAZIL MEAT MARKET'; the applicant's mark consists of the words 'REQUINTE BRAZIL'. For reasons that I will come to discuss in the conceptual comparison, I find that the word 'REQUINTE' in both marks plays an independent distinctive role within the mark, and as such plays a

⁷ Paragraph 39.

greater role in the overall impression. The words 'BRAZIL MEAT MARKET' and 'BRAZIL', whilst not negligible, play a lesser role in the overall impression.

Visual comparison

48. Visually, the words REQUINTE BRAZIL appear identically in both marks. This similarity appears at the beginning of the respective marks, being where consumers tend to focus,⁸ as this position is generally considered to have more impact due to consumers in the UK reading from left to right. The words MEAT MARKET in the opponent's mark act as a point of visual difference. Accordingly, I consider the marks to be visually similar to a high degree.

Aural comparison

49. Aurally, the words REQUINTE BRAZIL will be pronounced identically in both marks. The pronunciation of the words MEAT MARKET in the opponent's mark act as a point of aural difference. Accordingly, I consider the marks to be aurally similar to a high degree.

Conceptual comparison

50. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer. This is highlighted in numerous judgments of the GC and the CJEU including *Ruiz Picasso v OHIM* [2006] E.C.R.-I-643; [2006] E.T.M.R 29. The assessment must, therefore, be made from the point of view of the average consumer.

51. With regards to the word REQUINTE present in the respective marks, I am of the view that there are two possible scenarios. The first possibility is that UK consumers will perceive REQUINTE as an unknown foreign or invented word with no immediate concept. The second possibility is that a proportion of UK consumers, with knowledge of the Portuguese language, will recognise the word as a Portuguese dictionary word, meaning 'refinement'.⁹ However, in this regard, whilst a minority of relevant consumers

⁸ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02.

⁹ www.collinsdictionary.com/dictionary/portuguese-english/requinte.

in the UK may be familiar with the Portuguese term, I am of the view that this will not be a significant proportion of consumers. Instead, I find that the majority of consumers will perceive REQUINTE as a foreign or invented word and will therefore not attribute any particular meaning to the word.¹⁰

52. Additional concepts are created by the word Brazil present in the marks and the word MEAT MARKET present in the opponent's mark. The word BRAZIL will likely be perceived as the geographical origin of the goods and services at issue, on the basis that BRAZIL is a well-known geographical area in South America.¹¹ As for the words MEAT MARKET, this will likely be understood as a marketplace where meat is sold. Consequently, taking into account the goods and services at issue, the average consumer is likely to perceive the words BRAZIL MEAT MARKET and BRAZIL respectively, as alluding to certain characteristics of the goods and services at issue, i.e. their origin.

53. Therefore, taking all the above into account, I find that there is at least a medium degree of conceptual similarity for the proportion of UK consumers who are familiar with the Portuguese meaning of the word REQUINTE. However, for the proportion of UK consumers who perceive the word as an unknown foreign or invented word, no conceptual comparison is possible, rendering this element conceptually neutral. Accordingly, in this scenario the marks will have a low degree of conceptual similarity due to the shared concept emanating from the word BRAZIL.

Distinctive character of the opponent's mark

54. The distinctive character of a trade mark can be measured only, first, by reference to the goods or services in respect of which registration is sought and, second, by reference to the way it is perceived by the relevant public. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, 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

¹⁰ See *Interflora Inc v Marks and Spencer plc* [2013] EWHC 1291 (Ch).

¹¹ www.collinsdictionary.com/dictionary/english/brazil.

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).”

55. 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 and services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use that has been made of it.

56. I will begin by assessing the inherent distinctive character of the earlier trade mark.

57. In its witness statement,¹² the opponent states that the word REQUINTE is a Portuguese term meaning ‘refinement’ in English. The opponent explains that this word is often used to describe something that is elegant or has a high level of detail, adding that the choice of the word REQUINTE in the business name was deliberate, in order to convey a marketing message which would emphasise the high quality of the goods and services at issue.

¹² Dated 4 April 2024.

58. With regards to the word REQUINTE, whilst the opponent's submissions are noted, I am of the view that the Portuguese meaning of this word may not be universally known by the relevant UK consumers, and therefore I consider there to be a dual finding in relation to the distinctiveness of the mark as a whole. As previously discussed, consumers will likely perceive the words BRAZIL MEAT MARKET present in the mark merely as an indication as to the origin of the goods and services at issue. Therefore, for consumers unfamiliar with REQUINTE being the Portuguese word for 'refinement', the word would be perceived as an unknown foreign or invented word, and as such, in this scenario, I find that mark REQUINTE BRAZIL MEAT MARKET, as a whole, to be inherently distinctive to a medium degree.

59. However, where consumers recognise REQUINTE as a Portuguese word meaning 'refinement' I am of the view that this would be highly allusive in relation to certain characteristics of the goods and their associated services, as confirmed by the opponent, namely that the goods, including those goods being retailed and prepared, etc., are of a high quality, for example. However, as registered marks are assumed to have 'at least some distinctive character',¹³ for this group of consumers, I find that the mark REQUINTE BRAZIL MEAT MARKET, as a whole, will have a low degree of inherent distinctive character.

60. Although the opponent has not pleaded that its mark has acquired enhanced distinctiveness through its use in the UK, in its evidence, the opponent has stated that it established an English retail business in 2019, selling various goods, including meat, meat products, groceries, toiletries and other household goods through specialist establishments under the trade mark REQUINTE BRAZIL MEAT MARKET. However, the opponent has not provided any sales turnover figures or evidence of use. Therefore, I am not able to find that the mark's distinctive character has been enhanced through use beyond the inherent levels I have found above.

¹³ *Formula One Licensing BV v OHIM*, Case C-196/11P.

Likelihood of confusion

61. 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. One such factor is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services, and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the earlier trade mark, the average consumer for the goods and services, and the nature of the purchasing process. In doing so, I must be mindful 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.

62. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one trade mark for the other, while indirect confusion is where the average consumer realises the trade marks are not the same but puts the similarity that exists between the trade marks and goods and services down to the responsible undertakings being the same or related.

63. Earlier in the decision I found that:

- The marks are visually and aurally similar to a high degree and conceptually similar to at least a medium degree for those consumers familiar with the Portuguese meaning of the word REQUINTE; for those that perceive the word as invented, the marks are conceptually similar to a low degree.
- The similarity of the parties' goods and services vary between identical and similar to a low degree.
- Depending on consumers' perception of the word REQUINTE, I have found that the earlier mark has either a medium degree of inherent distinctiveness for consumers who perceive the word as invented, or a low degree of inherent

distinctiveness for those who are aware of the Portuguese meaning. On this point, it is acknowledged that a weaker degree of distinctive character in an earlier mark does not preclude a finding of confusion.¹⁴

- The average consumer would include members of the general public, paying a medium level of attention, as well as professionals, paying a slightly higher than medium level of attention (although not considerably so), and that the purchasing process will be predominantly visual, however, I have not discounted aural considerations.

64. The fact that the words REQUINTE BRAZIL are identically present in the competing marks and that the purchasing process for the goods and services at issue is predominantly visual is an important point of coincidence. Furthermore, I keep in mind that the beginnings of marks tend to make more of an impact than the ends. Accordingly, as the marks identically share the same beginnings resulting in the applicant's mark being fully encompassed in the opponent's mark where the only difference between the marks is the non-distinctive words MEAT MARKET at the end of the opponent's mark, it is my view that this difference will be easily overlooked by the average consumer. As such, I consider that the marks are likely to be mistakenly recalled or misremembered as each other when used on the goods and services at issue. Therefore, given the level of similarity across the marks at issue and the similarity or identity between the goods and services, I am of the view that the average consumer is unlikely to recall the differences between the marks resulting in a likelihood of direct confusion. This is so even bearing in mind the earlier mark's low level of inherent distinctive character for those consumers who are aware of the Portuguese meaning of REQUINTE (though, as previously stated, I do not consider this to be a significant proportion of the relevant public). In this regard, I note that a degree of caution is required before finding a likelihood of confusion on the basis of common elements which are either descriptive or are low in distinctive character,¹⁵ nevertheless, I maintain that there is a likelihood of direct confusion.

¹⁴ See *L'Oréal SA v OHIM*, Case C-235/05 P.

¹⁵ *Nicoventures Holdings Limited v The London Vape Company Ltd* [2017] EWHC 3393 (Ch) and *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch).

65. Even if I am wrong in that finding, taking all of the above factors into account, the average consumer is likely to view the common use of the words REQUINTE BRAZIL in relation to identical and similar goods and services, as an indication that the marks originate from the same or economically linked undertakings. The use of the words MEAT MARKET at the end of the opponent's mark, being allusive in respect of the goods and services at issue is, will merely be perceived as a non-distinctive element, of the kind which one would expect to find in a sub-brand or brand extension.¹⁶ Consequently, I consider there to be a likelihood of indirect confusion.

CONCLUSION

66. The partial opposition under section 5(2)(b) succeeds in full. Therefore, the applicant's mark is hereby, subject to any successful appeal of my decision, refused registration for the following goods and services:

Class 29 Meat; Meats; Meat and meat products; Smoked meats; Fresh meat; Salted meat; Meat [preserved]; Salted meats; Frozen meat products; Steaks of meat.

Class 30 Foods (Farinaceous -).

Class 35 Retail services relating to bakery products; Retail services in relation to foodstuffs; Retail services in relation to coffee.

Class 39 Delivery of food; Transport of food; Distribution [transport] of retail goods.

Class 43 Food preparation.

67. The application can proceed to registration in respect of the following unopposed services:

Class 39 Import and export cargo handling services.

¹⁶ *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, at [16-17].

COSTS

68. As the opponent has succeeded, it is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice (“TPN”) 1/2023. In the circumstances, I award the opponent the sum of £800 as a contribution towards the costs of the proceedings. The sum is calculated as follows:

Official fee:	£100
Preparing a notice of opposition and considering the counterstatement:	£300
Filing evidence ¹⁷ and considering the other side’s evidence:	£400
Total:	£800

69. I therefore order Requite Brazil Ltd to pay PIOTTO LTD, the sum of £800. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 12th day of August 2025

Sam Congreve
For the Registrar

¹⁷ This amount takes into account that the evidence filed by the opponent was very light, comprising a short witness statement and one exhibit, containing a screenshot of a dictionary reference taken from The Cambridge Portuguese–English Dictionary (online).

Annex

Application No. 3848732 (the contested goods and services are underlined)

Class 29 Meat; Meats; Meat and meat products; Smoked meats; Fresh meat; Salted meat; Meat [preserved]; Salted meats; Frozen meat products; Steaks of meat.

Class 30 Foods (Farinaceous -).

Class 35 Retail services relating to bakery products; Retail services in relation to foodstuffs; Retail services in relation to coffee.

Class 39 Import and export cargo handling services; Delivery of food; Transport of food; Distribution [transport] of retail goods.

Class 43 Food preparation.