

O/0756/26

CONSOLIDATED PROCEEDINGS

TRADE MARKS ACT 1994

**IN THE MATTER OF
TRADE MARK APPLICATIONS NO. UK4096185 & NO. UK4095832
IN THE NAME OF SUHAILA DAHIR
TO REGISTER AS TRADE MARKS**

Jikkō

AND

Suhaila's Jiko

IN CLASS 43

AND

**IN THE MATTER OF OPPOSITIONS THERETO
UNDER NUMBERS 450918 & 450919
BY SABIIB FOODS LTD**

BACKGROUND AND PLEADINGS

1. On 5 September 2024, Suhaila Dahir (“the applicant”) applied to register trade mark number UK4096185 for the mark **Jikkō** and UK4095832 for the mark **Suhaila's Jiko** in the United Kingdom. Both the applications were accepted and were published for opposition purposes on 20 September 2024 in respect of services in class 43.

2. The applications are opposed by Sabiib Foods Ltd (“the opponent”). The oppositions were each filed on 21 November 2024, and are both based upon Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The oppositions are directed against all of the services in the applications, as listed in the table under paragraph 14 of this decision. The opponent relies upon the following mark in each of the oppositions, which have been consolidated:¹

JIKO

UK trade mark registration number 4043268

Filing date: 24 April 2024

Registration date: 26 July 2024

Registered in class 43

Relying on all services, as listed under paragraph 14 of this decision.

3. The above mark qualifies as an earlier mark under section 6(1) of the Act. As it had not been registered for more than five years at the date the contested applications were filed, it is not subject to the use provisions contained in section 6A of the Act.

4. The opponent submits that the applied for marks are similar to the earlier trade mark and that the services offered under each of the marks are either similar or identical, resulting in a likelihood of confusion.

5. The applicant filed counterstatements denying the claims that there is a likelihood of confusion between the marks, although they admit that the services offered under

¹ As confirmed in the official letter dated 6 April 2025, issued to the parties by the Tribunal.

each of the marks are similar. They request that the oppositions be dismissed and each of the applications proceed to registration

6. Only the opponent filed evidence. Neither party requested a hearing; neither party elected to file written submissions in lieu of a hearing. This decision is taken following careful consideration of the papers on file.

7. In these proceedings, the opponent is represented by Cambrose Solicitors; the applicant is not professionally represented.

EVIDENCE

8. The opponent filed evidence in support of the opposition in the form of the witness statement of Serhat Ozberber, dated 23 May 2025. The witness statement is accompanied by 7 exhibits,² labelled EXHIBIT B to EXHIBIT H. Mr Ozberber is the Director of the opponent.

9. I have read and considered all of the evidence, and I will refer to the relevant parts at the appropriate points in the decision to the extent I consider necessary.

DECISION

10. 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.

² A further exhibit, labelled EXHIBIT A, was originally filed but not admitted into the proceedings as it had not been mentioned in the witness statement. It was also noted that some of the pages in the remaining exhibits had not been paginated. The opponent was invited to re-file the evidence in the correct format, but elected not to do so. As a result, EXHIBIT A and the pages which were not paginated are disregarded.

Section 5(2)(b)

11. Section 5(2)(b) is relied on and 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”.

12. Section 5A states:

“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.”

13. 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, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely

upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

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

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

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

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

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

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

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

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

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

Comparison of services

14. The services to be compared are:

Opponent's services
<u>Class 43</u> <i>Fast food restaurants; Food and drink catering; Catering of food and drink; Catering (Food and drink -); Serving food and drink for guests in restaurants; Catering of food and drinks; Provision of food and drink in restaurants; Fast-food restaurant services; Serving food and drink in restaurants and bars; Providing food and drink for guests in restaurants; Take-out restaurant services; Take-away food and drink services; Food and drink catering for banquets; Restaurant services for the provision of fast food; Takeaway food and drink services; Food and drink catering for institutions; Providing food and drink in restaurants and bars; Take-away restaurant services; Serving food and drinks; Take-away food services; Takeaway food services; Catering for the provision of food and drink; Serving food and drink for guests; Take-away fast food services; Restaurant services; Preparation of food and drink; Catering for the provision of food and beverages; Food and drink catering for cocktail parties; Carry-out restaurants; Providing food and drink; Providing of food and drink; Corporate hospitality (provision of food and drink); Provision of food and drink; Catering in fast-food cafeterias.</i>
Applicant's services
UK 4096185 Jikkō <u>Class 43</u> <i>Food and drink catering; Catering of food and drink; Preparation of food and drink; Preparation of food and beverages; Fast food restaurants; Food preparation; Take-</i>

away food and drink services; Serving food and drinks; Hospitality services [food and drink]; Decorating of food; Providing food and drink in bistros; Food and drink catering for banquets; Serving food and drink for guests in restaurants; Providing food and drink in doughnut shops.

UK 4095832 Suhaila's Jiko

Class 43

Food and drink catering; Catering (Food and drink -); Catering of food and drinks; Provision of food and drink in restaurants; Providing of food and drink; Takeaway food and drink services; Serving food and drinks; Hospitality services [food and drink]; Take-away food services; Food and drink catering for banquets; Take-away fast food services; Providing food and drink for guests in restaurants; Serving food and drink for guests in restaurants.

15. Where the services in the specification of one party are included in a broader term from the other party's specification, those services are considered to be identical: See *Gérard Meric v OHIM*, Case T-133/05 at [29].

16. In *Canon*, Case C-39/97, the Court of Justice of the European Union ("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".

17. 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.

18. For the purposes of considering the issue of similarity of the goods and/or services, it is permissible to consider groups of terms collectively where appropriate: *Separode Trade Mark*, BL O-399-10.³

19. In the case of services, the correct approach in considering the specification is to confine terms which are not clear or precise to the substance or core of their possible meanings.⁴

20. In their notice of defence, the applicant admits that the opposing services are similar, although they do not specify to what degree.

21. Some of the class 43 services included in both applications are self-evidently identical to those of the opponent. For example, the terms *Food and drink catering*; *Catering of food and drink*; and *serving food and drinks* are included in all three specifications. Meanwhile, “*Preparation of food and drink*”, which appears in the earlier mark and the applicant’s ‘185 mark, are also clearly identical. While the term “*Decorating of food*” in the applicant’s ‘185 mark may be a slightly more niche service, I consider that it would still be encompassed by the opponent’s “*Preparation of food and drink*”, rendering them identical as per the principles outlined in *Meric*.

22. I consider the opponent’s broad term “*Provision of food and drink*” to encompass each of the remaining terms of the two applications, and as such I find them to be identical, as per *Meric*.

The average consumer and the nature of the purchasing act

23. The average consumer is a legal construct, deemed to be reasonably well informed and reasonably circumspect. 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*

³ Paragraph 5

⁴ *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1)* [2024] UKSC 36, at [365].

(Rev1) [2024] EWCA Civ 262, where he pointed out that, inter alia, the average consumer's level of attention is likely to vary according to the category of goods or services in question.

24. The average consumer of the overlapping services will most likely be the general public, or will be business consumers for the provision of corporate hospitality. The consumer will be exposed to the services through signage displayed on the premises themselves, through advertisements in magazines and newspapers, or via websites and search engines on the internet. The selection process will be predominantly visual, although I do not discount word of mouth recommendations or where the services are advertised orally, for example, via local radio.

25. The cost of the services will vary greatly, ranging from inexpensive for the provision of fast food/takeaway food and the like, to relatively expensive for high-end restaurants, or where the catering services relate to special events such as birthdays and weddings, as well as for corporate hospitality services. Many of the services offered by the undertakings are likely to fall somewhere between the two ends of the scale. At the lower end of the scale, the services may be chosen on impulse, purchased relatively frequently and with a lesser degree of consideration. The services which are engaged at the higher end of the scale are likely to be a much less frequent occurrence, and will have been carefully chosen following full consideration of the range of the services being offered and the necessary requirements warranted by the particular occasion. Specific dietary requirements may also need to be considered as part of the selection process at all points along the spectrum, as will the physical location of premises and the facilities being offered. Overall, I consider that the average consumer of the overlapping services will pay between a medium to high degree of attention during the selection of those services.

Comparison of marks

26. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions

created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated in *Bimbo SA v OHIM* Case C-591/12P, 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.”

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

28. The respective trade marks are shown below:

Opponent's trade mark	Applicant's trade marks
	<u>UK 4096185</u> Jikkō
	<u>UK 4095832</u> Suhaila's Jiko

Overall impression

29. The opponent's mark consists of the word “**JIKO**” presented in a slightly stylised black typeface in capital letters. I do not consider that the stylisation of the opponent's mark deviates greatly from a standard typeface, and in my view, it does not add to the trade mark message conveyed by the word. As such, the presentation does little to contribute to the overall impression of the mark, which lies in the word itself.

30. The applicant's '185 mark consists of the word **Jikkō**, presented in a standard black typeface, with the first letter only being capitalised. As there are no other elements, the overall impression conveyed by the mark rests in the word itself.

31. The applicant's '832 mark consists of two words, **Suhaila's Jiko**, presented in a standard black typeface, with the first letter only of each word being in capital letters. I do not consider that either word dominates, and as the mark contains no other elements, the overall impression lies in the combination of words which make up the whole.

32. In making my comparison, I note that in *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02, the General Court ("GC") noted that the beginning of words tend to have more visual and aural impact than the ends, however, I accept that this is not always the case. Meanwhile, while I note that there is no special test which applies to the comparison of "short" marks,⁵ in *dm-drogerie markt GmbH & Co. KG v OHIM*, Case T-304/10, the GC noted that in the case of word signs which are relatively short, the differences between marks of different lengths will be more easily grasped by the average consumer.⁶

Visual comparison

33. The opponent's mark and the applicant's '185 mark each consist of a single word, made up of four and five letters respectively. I do not consider the difference in capitalisation/title case is relevant to the visual impact, as the registration of a word mark gives protection irrespective of capitalisation: see *Bentley Motors Limited v Bentley 1962 Limited*, BL O/158/17. The opponent's (marginally stylised) mark is subsumed within the applicant's mark, which contains an additional letter K in the middle of the word. The last letter "o" in the applicant's mark also has a horizontal line (or 'macron') directly above it, which is absent from the opponent's mark. To those consumers who notice the macron, this creates a further point of visual disparity

⁵ *Robert Bosch GmbH v Bosco Brands UK Limited*, Case BL O/301/20, at [44].

⁶ At [42].

between the marks. Overall, I consider the marks to be visually similar to between a medium to high degree.

34. The applicant's '832 mark is made up of two words, in comparison to the single word contained in the opponent's mark. Again, the opponent's mark "JKO" is wholly contained within the applicant's mark, the stylisation notwithstanding, with the word in common coming at the end of the applicant's two-word combination, which is preceded by the word "Suhaila's", being a point of visual difference between them. Considering the marks as a whole, I find there to be a medium degree of visual similarity between them.

Aural comparison

35. Regardless of the additional letter K and the macron present only in the applicant's mark, and in the absence of any submissions to the contrary, I consider that the opponent's mark and the applicant's '185 mark would be pronounced identically, as two syllables.⁷

36. While the word in common "JKO" would be articulated in the same way in each, the additional word "Suhaila's", present only in the applicant's '832 mark, would also be voiced. As such, the applicant's mark as a whole would be pronounced as five syllables, as opposed to the two syllables voiced in the earlier mark. Overall, I consider the marks to be aurally similar to a medium degree.

Conceptual comparison

37. For a conceptual message to be relevant, it must be capable of immediate grasp by the average consumer - Case C-361/04 P *Ruiz-Picasso and others v OHIM* [2006]⁸.

⁷ I am aware that the macron serves to indicate a long vowel sound, however, I do not consider that a significant proportion of the average consumer would be aware of this and would most likely pronounce each of the marks in the exact same way.

⁸ Paragraph 56.

38. In its evidence, the opponent states that the words “JIKO” means “kitchen” in Somali.⁹ I have not been provided with a meaning of the word “Jikkō”, as included in the applicant’s ‘185 mark. I have no evidence to show that any of the various food-related services are directed exclusively towards a niche Somalian enclave within the UK. Even if that were the case, I consider that the average consumer could still be any member of the UK public with an interest in food and drink.¹⁰ Therefore, in relation to the opposing marks, I consider that a significant proportion of the average consumer would perceive both “JIKO” and “Jikkō” to be either an invented word, or as a foreign word with no clear and identifiable semantic content. As such, I consider the opponent’s mark and the applicant’s ‘185 mark to be conceptually neutral.

39. Given the use of the possessive apostrophe in the first word of the applicant’s ‘832 mark, I would expect that a significant proportion of the average consumer would perceive the word “Suhaila’s” as indicating a person’s name, being the ‘owner’ of the “Jiko” element. As such there is conceptual disparity between the marks overall. However, as already mentioned, I consider that the overlapping “JIKO” element will most likely be seen by a significant proportion of the average consumer as a wholly invented word with no clearly recognisable conceptual content, and as such, this distinctive element common to both the marks is conceptually neutral.

Distinctive character of the earlier mark

40. The distinctive character of a trade mark can be appraised only, first, by reference to the goods in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public – *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91. The factors I must take into account in assessing the level of distinctive character were set out by the CJEU in *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97:

“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

⁹ At point 2 of the witness statement of Serhat Ozberber.

¹⁰ See *Pooja Sweets & Savouries Ltd V Pooja Sweets Limited*, BL O-195-15.

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)."

41. Registered trade marks possess varying degrees of inherent distinctive character, being lower where they are allusive or suggestive of a characteristic of the services, ranging up 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 made of it. The opponent has not claimed that its mark has enhanced distinctiveness, per se, although I note that in the evidence filed in support of the opposition, it has provided details of its investment in the brand, as well as its business plans in relation to the future development of the trade mark. I have carefully considered the evidence, however, it does not go as far as showing evidence of enhanced distinctiveness. As such, I only have the inherent characteristics of the mark to consider.

42. Earlier in this decision, I considered that the word "JKO" would be perceived as an invented word with no clear or identifiable meaning in the UK. As such, to a significant proportion of the average consumer, it is neither descriptive nor allusive of the class 43 services to which the mark relates. I therefore consider the mark to be inherently distinctive to a high degree.

Likelihood of confusion

43. There is no simple formula for determining whether there is a likelihood of confusion. It is clear that I must make a global assessment of the competing factors (*Sabel* at [22]), keeping in mind the interdependency between them i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective services and vice versa (*Canon* at [17]). I

must consider the various factors from the perspective of the average consumer, bearing in mind 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 he has retained in his mind (*Lloyd Schuhfabrik* at [26]).

44. There are two types of possible confusion: direct, where the average consumer mistakes one mark for the other, or indirect, where the average consumer recognises that the marks are different, but assumes that the goods and/or services are the responsibility of the same or connected undertakings. The distinction between these was explained by Mr Iain Purvis Q.C. (as he then was), sitting as the Appointed Person, in *L.A. Sugar Limited v Back Beat Inc*, Case BL-O/375/10. He said:

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

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

(a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right (“26 RED TESCO” would no doubt be such a case).

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as “LITE”, “EXPRESS”, “WORLDWIDE”, “MINI” etc.).

(c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension (“FAT FACE” to “BRAT FACE” for example).”

45. The above are examples only which are intended to be illustrative of the general approach. These examples are not exhaustive but provide helpful focus.

46. Earlier in this decision, I found the applicant’s contested services in each of the applied-for marks to be identical (either self-evidently or as per the principles outlined in *Meric*) to the opponent’s class 43 services. I considered that the level of attention of the average consumer would range between a medium to high degree when selecting the services, which would be selected by predominantly visual means (although I did not discount aural considerations).

47. In relation to the applicant’s ‘185 mark, I found it to be visually similar to the opponent’s mark to between a medium to high degree, and aurally identical. I considered the marks to be conceptually neutral. In relation to the applicant’s ‘832 mark, I found it to be both visually and aurally similar to the opponent’s mark to a medium degree, and while there was a conceptual disparity between the marks overall due to the additional word “Suhaila’s” in the applicant’s mark, I found the common element “JIKO” to be conceptually neutral. I considered the earlier mark to be inherently distinctive to a high degree.

48. I also note that the opponent submits that the competing services are located in close geographic proximity and are likely to share the same consumer base.¹¹ It should be noted that a trade mark registration is granted protection for the specified goods or services for use throughout the UK, and is not confined to use in a specific region. That being said, while the opponent has not provided evidence to show actual

¹¹ At point 5 of the witness statement.

confusion in the marketplace, absence of evidence of confusion does not necessarily mean an absence of actual confusion.¹²

49. I have weighed up each of the competing factors in my decision, including the differences as well as the similarities between the competing marks. The average consumer is unlikely to see the marks side-by-side and will therefore be reliant on the imperfect picture of them they have kept in their mind. In spite of the higher degree of attention paid by the consumer during the selection of some of the services, I bear in mind that in relation to the assessment of the likelihood of confusion, it is the section of the public with the lowest level of attention which must be taken into consideration.¹³

50. In relation to the applicant's '185 mark, given the high degree of inherent distinctive character of the word "JIKO" in the earlier mark, as well as, in particular, the medium to high degree of visual similarity and aural identity between the opponent's "JIKO" and the applicant's "Jikkō", in my view, the similarities between the marks are such that the applicant's mark is likely to be mistakenly recalled as the opponent's earlier mark, or vice versa.

51. In relation to the applicant's '832 mark, in spite of the high degree of inherent distinctive character of the earlier mark, I consider that the overall differences between the marks are such that they are unlikely to be mistakenly recalled as each other by the general public paying at least a medium level of attention. I therefore find that there is no likelihood of direct confusion.

52. Taking into account the previously outlined guidance of Mr Iain Purvis Q.C. (as he then was) in *L.A. Sugar*, I will now consider whether there might be a likelihood of indirect confusion. In *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17, Mr James Mellor Q.C. (as he then was), as the Appointed Person, stressed that a finding of indirect confusion should not be made merely because the two marks share a common element. In this connection, he pointed out that it is not sufficient that a mark merely calls to mind another mark. This is mere association not indirect confusion.

¹² *Roger Maier and Another v ASOS*, [2015] EWCA Civ 220, at [80]; and *The European Limited v The Economist Newspaper Ltd* [1998] FSR 283.

¹³ Case T-247/12, *Argo Group International Holdings Ltd. v OHIM*.

53. In *Liverpool Gin Distillery Ltd and others v Sazerac Brands, LLC and others* [2021] EWCA Civ 1207, Lord Justice Arnold referred to the comments of James Mellor QC (as he then was) sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said (at [16]) that "a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion". Lord Justice Arnold added that there must be "a proper basis" for concluding that there is a likelihood of indirect confusion when there is no likelihood of direct confusion.

54. I acknowledge that the categories listed by Mr Iain Purvis Q.C. (as he then was), are not exhaustive. I keep in mind the global assessment of the competing factors in my decision for each of the contested applications.

55. In relation to the applicant's '185 mark, while sight of one mark may bring to mind the other mark, in my view, there would be no logical reason for those consumers who notice and recall the differences between the marks to believe that there is an economic connection between the undertakings. Taking into consideration the difference in spelling alongside the additional macron in the applicant's mark, I consider it unlikely that such consumers would assume the differences are consistent with a brand extension or a sub-brand of the other. Consequently, I find no likelihood of indirect confusion.

56. In relation to the applicant's '832 mark, given that both marks have in common the identical word "JIKO", it is my view that a significant proportion of consumers will conclude that the addition of the possessive word "Suhaila's" in the later mark represents an alternative mark being used by the same or an economically linked undertaking. Consequently, I consider there to be a likelihood of indirect confusion for all services.

CONCLUSION

57. The opposition under section 5(2)(b) has been successful in its entirety in respect of both oppositions in these consolidated proceedings. Subject to any successful

appeal, trade mark application numbers **UK00004096185** and **UK00004095832** by Suhaila Dahir are refused registration.

COSTS

58. The opponent has been successful, and is therefore entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice (“TPN”) 1/2023. While I note that the opponent filed evidence, as it had little bearing on my assessment, I make no award for that evidence. I take into consideration that the substance of the information provided on the likelihood of confusion at Q9 of the two notices of opposition was essentially the same. Applying the guidance in the TPN, I consider the following to be fair:

Official fee x 2:	£200
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Preparing two notices of opposition, and considering the counterstatements:	£300
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Total:	£500
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59. I therefore order Suhaila Dahir to pay Sabiib Foods Ltd the sum of £500. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 20th day of August 2026

Suzanne Hitchings
For the Registrar,
the Comptroller-General