O/0989/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00003691869
BY FONTANA FOOD AB
TO REGISTER THE TRADE MARK:

GRILLOUMI BURGER

IN CLASSES 29, 30 AND 43

AND

IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 442397
BY FOUNDATION FOR THE PROTECTION OF THE
TRADITIONAL CHEESE OF CYPRUS NAMED HALLOUMI

BACKGROUND AND PLEADINGS

1. On 25 October 2016, Fontana Food AB ("the applicant") applied to register the trade mark shown on the cover page of this decision in the European Union. The applicant subsequently applied for the same mark in the UK on 8 September 2021. In accordance with Article 59 of the Withdrawal Agreement between the UK and the European Union, by filing an application for the same mark in the UK within nine months of the end of the transition period, the applicant's mark is deemed to have the same filing date and date of priority as the EU mark. Therefore, the deemed priority date of the application in these proceedings is considered to be 25 October 2016.

2. Under the above mark, the applicant seeks registration for the following goods and services:

Class 29 Meat, fish, poultry and game; Meat extracts; Preserved, frozen, dried and cooked fruits and vegetables; Jellies, jams, compotes; Eggs, milk and milk products; Edible oils and fats.

Class 30 Coffee, tea, cocoa and artificial coffee; Rice; Tapioca and sago; Flour and preparations made from cereals; Bread, pastry and confectionery; Edible ices; Sugar, honey, treacle; Yeast, baking-powder; Salt; Mustard; Vinegar, sauces (condiments); Spices; Ice.

Class 43 Services for providing food and drink; Coffee-shop services; Restaurants.

3. The application was fully opposed by Foundation for the Protection of the Traditional Cheese of Cyprus named Halloumi ("the opponent") on 7 August 2023.

4. The opposition is based upon sections 5(2)(b) and 5(3) of the Trade Marks Act 1994 ("the Act"), and the opponent relies upon a collective trade mark, which only members of the opponent are entitled to use within the EU in relation to their products. The opponent prescribes conditions regarding composition and method of manufacture

with which members must comply in order to use the mark. The opponent's collective trade mark is as follows:

HALLOUMI

Comparable UK collective trade mark (EU) registration no. UK00901082965
Filing date 22 February 1999; Registration date 14 July 2000.
Relying upon all of the goods for which the earlier mark is registered, namely:

Class 29 Cheese.

5. Under section 5(2)(b), the opponent claims that there is a likelihood of confusion because the goods and services are identical or similar, and the marks are highly similar.

6. Under section 5(3), the opponent claims that the earlier mark enjoys a reputation across the UK in relation to a speciality Cypriot cheese "which is of a certain quality, and which is produced by Foundation Members" in accordance with their regulations. The opponent claims that due to the similarity of the marks and the reputation of the earlier mark, that a link will be made between them, and that they will believe that the applicant's mark "is being used to denote services under which goods will be provided which have certain characteristics that are of a particular quality and have been made in accordance with particular methods by Foundation Members". The opponent thus claims that the applicant will take an unfair advantage of the "substantial repute" of the earlier mark, and that use of the applicant's mark is detrimental to the earlier mark's reputation. More specifically, the opponent claims that use of the applicant's mark will damage the ability of the earlier mark to denote goods that are produced by Foundation Members in accordance with their regulations, "thereby damaging the ability of the former mark to act as a guarantee of quality, composition and origin".

7. The applicant filed a counterstatement, admitting that "milk products are similar products to cheese", but denied the rest of the claims made, and put the opponent to proof of use.

8. A hearing took place before me on 9 July 2025.

9. The opponent was represented by Tim Austen of Three New Square instructed by Clifford Chance LLP. The applicant was represented by Ian Bartlett of Beck Greener LLP. I make this decision having taken full account of all the papers, referring to them below as necessary.

RELEVANCE OF EU LAW

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.

EVIDENCE

11. The opponent's evidence consists of the witness statement of Mr Marios Panayides dated 8 January 2024. Mr Panayides is the President of the opponent, a position which he has held since 1 September 2020, and his statement is accompanied by 29 exhibits (MP1-MP29).

12. **Exhibits MP20** and **MP21** of Mr Panayides statement contain the witness statements of Konstantinos Dafos dated 14 June 2013 and 4 August 2017. Mr Dafos has held the position of Assistant Commercial Counsellor and Commercial Counsellor of the Cyprus High Commission Trade Centre. His first statement is accompanied by 3 exhibits (KD1-KD3), and his second statement is accompanied by 4 exhibits (KD1-KD4).

13. **Exhibit MP22** of Mr Panayides statement contains the witness statement of Loucas Symeonides dated 30 August 2013. Mr Symeonides is the Commercial Counsellor of the Cyprus Trade Centre, a position he has held since 23 August 2010. His statement is accompanied by 3 exhibits (LS1-LS3).

14. **Exhibit MP24** of Mr Panayides statement contains the witness statement of Petros Michaelides dated 29 August 2013. Mr Michaelides is the Commercial Counsellor of the Cyprus Embassy Trade Centre, a position he has held since 5 July 2010. His statement is accompanied by 3 exhibits (PM1 to PM3).

15. **Exhibit MP27** of Mr Panayides statement contains the witness statement of Zacharias Triteos dated 29 August 2013. Mr Triteos is the Commercial Counsellor of the Cyprus Trade Centre, a position he has held since May 2004. His statement is accompanied by 3 exhibits (ZT1-ZT3).

16. The applicant's evidence includes the witness statement of Loizos Papadopoulos dated 7 June 2024. Mr Papadopoulos is the Chief Executive Officer of the applicant, a position which he has held since 2010, and his statement is accompanied by three exhibits (LP-A, LP1 and LP2).

17. I note that LP-A contains the previous witness statement of Mr Papadopoulos dated 22 September 2022. I bear in mind that this evidence all appears to pertain to the use of the applicant's "GRILLOUMI" mark on cheese goods, including sales figures for 2022 and 2023. These proceedings relate to the mark "GRILLOUMI BURGER", and I have not been provided with any reasoning as to why the applicant has provided sales figures and examples of its "GRILLOUMI" being sold on its website and in third party retailers. I must make a notional assessment based on the marks before me, and therefore, I do not consider that this evidence assists the applicant.

18. The applicant's evidence also includes the witness statement of Ian Bartlett dated 17 June 2024. Mr Bartlett is a registered trade mark attorney and IP litigator at Beck Greener LLP, the representatives for the applicant, and his statement is accompanied by 19 exhibits (IB-A to IB-S).

19. The opponent's evidence in reply consists of the witness statement of Vanessa Gabrielle Marsland dated 19 August 2024. Ms Marsland is a solicitor and partner at Clifford Chance LLP, the representatives for the opponent, and her statement is accompanied by 4 exhibits (VGM1-VGM4).

20. Whilst I do not propose to summarise it here, I have taken all of the parties' evidence and submissions into consideration in reaching my decision and will refer to them where necessary below.

DECISION

Section 5(2)(b)

21. Section 5(2)(b) 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."

22. The opponent's mark qualifies as earlier mark in accordance with section 6(1) of the Act as its filing date is earlier than the priority date of the applicant's mark. As the opponent's mark completed its registration process more than five years before the priority date of the mark in issue, it is subject to the use provisions of section 6A of the Act.

Proof of use

23. The applicant has requested proof of use of the earlier mark, and I will begin with that assessment. The relevant statutory provisions are as follows:

24. Section 6A of the Act states:

“(1) This section applies where

(a) an application for registration of a trade mark has been published,

(b) there is an earlier trade mark of a kind falling within section 6(1)(a), (aa) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and

(c) the registration procedure for the earlier trade mark was completed before the start of the relevant period.

(1A) In this section “the relevant period” means the period of 5 years ending with the date of the application for registration mentioned in subsection (1)(a) or (where applicable) the date of the priority claimed for that application.

(2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.

(3) The use conditions are met if –

(a) within the relevant period the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or

(b) the earlier trade mark has not been so used, but there are proper reasons for non- use.

(4) For these purposes –

(a) use of a trade mark includes use in a form (the “variant form”) differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the

trade mark in the variant form is also registered in the name of the proprietor), and

(b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(5)-(5A) [Repealed]

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services."

25. As the opponent's earlier mark is a comparable mark, paragraph 7 of Part 1, Schedule 2A of the Act is also relevant. It reads:

"7.— (1) Section 6A applies where an earlier trade mark is a comparable trade mark (EU), subject to the modifications set out below.

(2) Where the relevant period referred to in section 6A(3)(a) (the "five-year period") has expired before IP completion day—

(a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in section 6A(3) and (4) to the United Kingdom include the European Union.

(3) Where [IP completion day] falls within the five-year period, in respect of that part of the five-year period which falls before IP completion day —

(a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM ; and

(b) the references in section 6A to the United Kingdom include the European Union".

26. Pursuant to section 6A of the Act, the relevant period for assessing whether there has been genuine use of the earlier mark is the five years ending on the priority date of the applicant's mark, i.e. 26 October 2011 to 25 October 2016 (which was accepted by the parties at the hearing). By virtue of paragraph 7 of Part 1, Schedule 2A of the Act, use within the EU is relevant for the part of the relevant period which falls prior to IP Completion Day (31 December 2020), which, in this case, is its entirety. Use within the UK (which during the relevant period was part of the EU) is also relevant.

27. In *easyGroup Ltd v Nuclei Ltd & Ors* [2023] EWCA Civ 1247, Arnold LJ summarised the law relating to genuine use as follows:

"105. The principles applicable to determining whether there has been genuine use of a trade mark have been considered by the CJEU in a considerable number of cases, the principal decisions being Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, Case C-259/02 *La Mer Technology Inc v Laboratories Goemar SA* [2004] ECR I-1159, Case C-416/04 P *Sunrider Corp* v *Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bundervsvereinigung Kamaradschaft 'Feldmarschall Radetsky'*[2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Merken BV v Hagelkruis Beheer BV* [EU:C:2012:816], Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], Case C-141/13 *P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089], Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434] and Joined Cases C–720/18 and C–721/18 *Ferrari SpA v DU* [EU:C:2020:854].

106. Ignoring issues which do not arise in the present case, such as use in relation to spare parts or second-hand goods and use in relation to a sub-category of goods or services, the principles may be summarised as follows:

(1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37].

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at[36]; *Sunrider* at [70]; *Verein* at [13]; *Centrotherm* at [71]; *Leno* at [29]; *Ferrari* at [32].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Centrotherm* at [71]; *Leno* at [29]; *Gözze* at [37], [40]; *Ferrari* at [32].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the

characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34]; *Leno* at [29]-[30], [56]; *Ferrari* at [33].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no *de minimis* rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72]; *Leno* at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32]."

28. It is relevant that the earlier mark is a collective trade mark. Such marks are described at section 49 of the Act as follows:

"(1) A collective mark is a mark which is described as such when it is applied for and is capable of distinguishing the goods or services of members of the association which is the proprietor of the mark from those of other undertakings.

(1A) The following may be registered as the proprietor of a collective mark –

(a) an association of manufacturers, producers, suppliers of services or traders which has the capacity in its own name to enter into contracts and to sue or be sued; and

(b) a legal person governed by public law.

(2) The provisions of this Act apply to collective marks subject to the provisions of Schedule 1."

29. Schedule 1 of the Act includes certain provisions specific to collective marks, such as the filing of the regulations of the association in question and additional grounds of revocation and invalidity.

30. The factors relevant to whether there has been genuine use of a collective mark were considered by the Court of Justice of the European Union ("CJEU") in *Der Grüne Punkt – Duales System Deutschland GmbH v EUIPO*, C-143/19P, EU:C:2019:1076. It said:

"52 As to the substance, it should be recalled that, as the General Court has noted in paragraph 26 of the judgment under appeal, the essential function of an EU collective mark is to distinguish the goods or services of the members of the association which is the proprietor of the mark from those of other undertakings (judgment of 20 September 2017, *The Tea Board v EUIPO*, C-673/15 P to C-676/15 P, EU:C:2017:702, paragraph 63).

53 Thus, unlike an individual mark, a collective mark does not have the function of indicating to the consumer 'the identity of origin' of goods or services in respect of which it is registered, since that function, which seeks to guarantee to the consumer that the goods or services concerned have been manufactured or supplied under the control of a single undertaking which is responsible for their quality, is specific to individual marks (see, inter alia, judgment of 8 June 2017, *W. F. Gözze Frottierweberei and Gözze*, C-689/15, EU:C:2017:434, paragraph 41 and the case-law cited).

54 It must be noted, in that regard, that Article 66 of Regulation No 207/2009 by no means requires that manufacturers, producers, suppliers or traders who are affiliated with the association which is the proprietor of an EU collective mark, form part of the same group of companies which manufacture or supply

the goods or services under unitary control. That regulation does not preclude the members of such an association from being competitors, each of whom uses the collective mark indicating its affiliation with that association, on the one hand, and an individual mark indicating the identity of origin of its goods or services, on the other.

55 It also follows from the case-law of the Court, referred to in paragraph 26 of the judgment under appeal, that there is genuine use of a trade mark where the mark is used in accordance with its essential function, in order to create or preserve an outlet for the goods or services for which it is registered (see, inter alia, as regards individual marks, judgments of 11 March 2003, *Ansul,* C-40/01, EU:C:2003:145, paragraph 43, and of 3 July 2019, *Viridis Pharmaceutical v EUIPO*, C-668/17 P, EU:C:2019:557, paragraph 38).

56 That case-law applies, mutatis mutandis, to EU collective marks. Indeed, those marks, like individual marks, are part of the course of trade. Their use must therefore, in order to be classified as ‘genuine’ within the meaning of Article 15(1) of Regulation No 207/2009, in fact be part of the objective of the undertakings concerned to create or preserve an outlet for their goods and services.

57 It follows that an EU collective mark is put to genuine use where it is used in accordance with its essential function, which is to distinguish the goods or services of members of the association which is the proprietor of the mark from those of other undertakings, in order to create or preserve an outlet for those goods or services.

58 More specifically, such a mark is used in accordance with its essential function from the moment when it enables the consumer to understand that the goods or services covered originate from undertakings which are affiliated with the association, the proprietor of the mark, and to thereby distinguish those goods or services from those originating from undertakings which are not affiliated.”

Evidence of use

31. At the hearing, and in within their evidence,[1] both parties have referred to the previous case of the Tribunal, that being BL O/1200/23. This case involved both of the parties, and pertained to the applicant's previously applied for "GRILLOUMI" and "GRILLOUMAKI" marks. The decision was subsequently appealed to the High Court, whereby the Hearing Officer's findings were upheld, including that the opponent had demonstrated use of the earlier collective mark. However, I am not bound by these previous decisions, and I must make my conclusion based on the evidence before me and not the evidence that has been before previous Hearing Officers or the Courts.

32. At paragraph 38 of his witness statement, Mr Panayides states that "between 2011 and 2016, Foundation Members exported 31,470,996 kg of "HALLOUMI" cheese to the UK, to the value of over EUR 200,000,000 (see **exhibit MP6**)". However, I note that the monetary value made from the export of halloumi cheese to the EU and UK has been redacted in both **exhibits MP6** and **MP7**.[2] Nevertheless, this evidence shows that from 2011 to 2013, the UK alone ordered over 3 million kilograms of halloumi cheese per year. In 2015 the UK ordered over 6 million kilograms of halloumi, and in 2016 the UK ordered over 9 million kilograms of halloumi.

33. I have been provided with supporting invoice evidence contained in **exhibits MP13** to **MP16,** and **exhibit MP18**, showing that 5 of the opponent's members or former members, who are exporters from Cyprus, sold "HALLOUMI CHEESE" to customers based in France, the Czech Republic, Germany, Spain, Poland, Italy, Sweden and the UK between 2014 and 2016. Whilst the monetary values within the majority of the invoices have been redacted (including the cost of the goods and the invoice total), they show that thousands of kilograms of halloumi was ordered per invoice, several approaching the 20,000 kg net weight. The only invoices which contain unredacted sales figures are 3 from the Pantziarou Bros, from 2014, addressed to "Nordex Food Austria", which are contained in **exhibit MP14B**. They show that 4,993 units of

[1] Paragraph 6 of Mr Papadopoulos' statement, paragraph 3 of Mr Bartlett's statement and paragraph 7 of Ms Marsland's statement.
[2] I have also been provided with the exportation of halloumi from 2013 to 2018 from 2 of the opponent's members contained in **exhibits MP14A** and **MP15A**. Again, the value is redacted, and the quantity shows that between 14,000kg and 1,039,000kg of halloumi was exported to the UK per year.

"Taverna halloumi" (priced at €16.25 per unit) were ordered, amounting to €80,388.75. To support this, Mr Panayides states that the Pantziarou Bros, from 2014 to 2016, exported over 300,000 kilos of halloumi cheese to the UK.[3]

34. At the bottom of the Pittas Dairy Industries Ltd and Chrysostomos Elia & Son Ltd invoices (contained in **exhibits MP15B** and **MP16A**), it certifies that all of the goods are of "Cyprus produce" or of "Cyprus origin". The invoices also contain a 4 digit number in between the letters CY and EK, which appear to sometimes be encased by an oval outline. These numbers can be cross-referenced with, and appear in, the list of authorised users of the collective mark contained in **exhibit MP2**. Therefore, it is clear that the invoices contain a unique code which has been given to them by the Foundation to recognise them as an authorised user.

35. The same codes can also be found within the photographic evidence "of products manufactured by authorised users and sold in the UK market under the HALLOUMI mark"[4] contained in **exhibit KD3**. Whilst all of the photographs are undated, I note that 4 out of the 7 packets have a product date or a best before date between February 2013 and May 2014, including, for example, as follows:





[3] Paragraph 34 of Mr Panayide's witness statement
[4] Paragraph 8 of Mr Dafos' first witness statement

36. By virtue of these dates, I find it reasonable to infer that these goods would have been produced and sold during the relevant period. I also find that the above Anthos Halloumi clearly shows the authorised user number which I have circled in red, which, in his witness statement, Mr Dafos' calls the "relevant user's premises code".[5]

37. All of the packaging contained in **exhibit KD3** uses the word HALLOUMI as part of the wording/phrases "authentic Cyprus Halloumi" or "Cypriot Halloumi", or it is accompanied by the words "traditional Cyprus cheese", "authentic white cheese made in Cyprus", "cheese from Cyprus" or "traditional Cyprus village cheese". None of the above packaging states that Halloumi is a collective mark, or that the goods can only be produced by members of the Foundation. All of the packaging in **exhibit KD3** is affixed with the relevant user's premises code, however, this element is small and typically displayed on the back of the packaging. There is also no explanation on the packaging (or the invoices) as to what this code means or indicates, i.e. that it is a code given to Foundation members who can only use the HALLOUMI mark.

38. In his second witness statement, dated August 2017, Mr Dafos confirms that the major supermarkets supplied with HALLOUMI cheese includes Sainsburys, ASDA, M&S, Waitrose, Lidl, Aldi, Tesco, Co-Op and Morrisons. This is accompanied by undated photographic evidence of the packaging for these supermarkets contained in **exhibit KD1**. In regard to this witness statement and the accompanying supermarket evidence, at the hearing, Mr Austen submitted that: *"we invite you to infer from the 2017 date of Dafos 2 that that was the case during the relevant period pre-2016, as well."*[6] However, Mr Austen does not provide any clarification as to how, or on what basis, I could make such an inference. I also bear in mind that some of the photographs of Halloumi packaging have a 2018 best before date,[7] and therefore it is unlikely that these dairy products would have been sold during the relevant period. However, the ASDA Halloumi has a best before date of February 2017. Consequently, the ASDA Halloumi could have been produced and sold in 2016 (near the end of the relevant period). The ASDA Halloumi is produced by Pittas Dairy Industries Limited,[8]

[5] Paragraph 8 of Mr Dafos' first witness statement. The back of the Morrisons packaging shown on the left-hand side of my decision, also contained in **exhibit KD3**, is also affixed with the premises code.
[6] Page 6 of the hearing transcript.
[7] Lidl, Aldi and Tesco Halloumi.
[8] This is contained in **exhibit DK1**.

one of the opponent's members listed in **exhibit MP2**. I also note that examples of Pittas Dairy invoices dated between September 2014 and October 2016 are contained in **exhibit MP15B**, albeit I am unable to determine whether any of the invoices pertain to sales made to ASDA on the basis that the client information is redacted. While the ASDA Halloumi has a "product of Cyprus" stamp affixed on its packaging, again, none of the aforementioned packaging (or the Pittas Dairy invoices) states that Halloumi is a collective mark, meaning that the goods can only be produced by members of the association.

39. Mr Panayides provides the opponent's marketing expenditure in the EU for between 2014 to 2018 in **exhibit MP8**. In 2014 it was €39,273; in 2015 it was €62,113; and in 2016 it was €173,646.[9] It is said to relate to participation in food and drink exhibitions, organising promotional events with embassies and Trade Centres, and producing marketing leaflets and articles.[10] Mr Panayides confirms that three exporters (whose sales invoices are contained within the aforementioned exhibits) were present at exhibitions in the EU.[11] I note that the majority of these exhibitions fell after the relevant period, as they occurred in 2017 and 2018. While the SIAL trade fair was hosted in 2016,[12] I have not been provided with the event date, and thus I am unable to determine if it fell within the relevant period. Nevertheless, one exporter did show at the International Food and Drink exhibition ("IFE") in London in 2015.[13] This is supported by Mr Dafos' second witness statement, in which he confirms that the Cyprus Trade Centre had some involvement with the IFE in London in alternate years between 2003 and 2015.[14] The wording of Mr Dafos's statement is not especially clear, but it appears that they organised the booking of the stands and delivering the product exhibits for its HALLOUMI cheese producers.[15] Furthermore, advertisements in two issues of the Eleftheria newspaper dated March 2015 mention that "Halloumi the traditional registered cheese of Cyprus" which will be exhibited at the IFE that month.[16] However, I do not have any accompanying evidence before me, such as photographs

[9] The remaining figures fall outside of the relevant period
[10] Paragraph 29 of Mr Panayides statement
[11] Paragraphs 32 to 34 of Mr Panayides statement
[12] Paragraph 32 of Mr Panayides statement
[13] Paragraph 33 of Mr Panayides statement
[14] Paragraph 7 of Mr Dafos' second statement
[15] Paragraph 6 of Mr Dafos' first statement
[16] **Exhibit KD4**

to demonstrate how the opponent's stand was presented, or narrative evidence to confirm how many people from the EU or UK attended the IFE events, or how the attendees were educated in regard to the opponent's collective mark.

40. Nevertheless, I have been provided with brochure evidence exhibited in **MP9.** Mr Panayides states that "500 copies were distributed at trade shows and similar events in 2016 and 2017".[17] Any shows that occurred in 2017 would fall after the relevant period and the only event stated to have occurred in 2016 was the SIAL trade fair. On this basis, I find it reasonable to infer that the **MP9** brochure was likely distributed at this event. Mr Panayides' confirms that the trade fair was held in Paris, which attracted over 7,000 exhibitors, 155,000 visitors and over 2,685 good journalists.[18] This is confirmed in **exhibit MP10**, which contains a 2 page leaflet titled "look deeper into SIAL Paris 2016". I note that the leaflet itself does not provide an exact date as to when this was hosted, but instead confirms that its next event is scheduled in Paris for October 2018.

41. I note that the brochure exhibited in **MP9** opens with the wording "Halloumi is officially recognized worldwide as a distinctive cheese indigenous to Cyprus. Halloumi is an unripe, semi hard white cheese […]." It says that "Halloumi" is registered as a collective mark and that the mark "is applied to products produced only in the Republic of Cyprus using raw materials and methods of production unique to the country". It also states that halloumi has been made in Cyprus since at least 1554, though exactly when it became known as "halloumi" is unclear, and that the name appears to have been adopted at least by 1738, when the brochure reports that halloumi was "renowned overseas".

42. There are 9 different examples of UK promotional material provided by Mr Dafos in both of his witness statements, such as articles, advertisements and recipes dated between 2003 and 2017. These are contained in **exhibit KD1** of his first witness statement, and **exhibit KD3** of his second witness statement. However, I note that only 1 article (titled "Food of Gods") falls within the relevant period. This is from the

[17] Paragraph 30 of Mr Panayides statement
[18] Paragraph 32 and footnote 4 of Mr Panayides statement

Specialty Food Magazine, which Mr Dafos dates as being from November 2013,[19] which had a circulation of 8,500.[20] I note the following statements are contained within this article:

- "Awareness from importers all around the world regarding Cypriot products has reached an all time high, through careful implementation of a targeted export promotion strategy led by the Cyprus Ministry of Energy, Commerce, Industry & Tourism".
- "It's well-known that the sun baked Island of Cyprus produces a huge range of tasty foodstuffs, many of which are already extremely popular abroad".
- "Halloumi, for instance, once a cottage industry produced salty cheese which was preserved in brine, has been improved by modern, technological production methods, delivering a unique traditional delicacy which can be produced solely in Cyprus".
- Halloumi for which Cyprus is justly farmed for centuries, was produced by families and consumed as an essential part of their diet, it has now become a runaway success with International cheese buyers".
- "The flavour of Cyprus Halloumi is the result of a combination of uniquely Cypriot factors such as the warm climate and the fodder that the island produces for Cyprus-bred sheep and goats".

43. However, there is no reference to the word "HALLOUMI" being a collective mark, or what this means, i.e. that only members of the Foundation may use it.

44. I have also been provided with 9 articles which were published in Germany,[21] 6 of which fall within the relevant period, being published between 2012 and 2016. All of these articles clearly refer to HALLOUMI as being a registered collective trade mark. However, they do not specify what this means. There is no reference to the Foundation and its members, or that use of the word HALLOUMI may only be used by them to designate the Foundation's goods. Nevertheless, Mr Panayides confirms that the article evidence contained in **exhibit MP24** had a circulation of 60,000 readers and

[19] Document 6, **exhibit KD3** (2017)
[20] Paragraph 6(f) of Mr Dafos' second witness statement
[21] **Exhibits MP24** to **MP26** (the evidence encompassed by Petros Michaelides witness statement)

the article evidence contained in **exhibit MP25** had a circulation of 20,000 readers. **Exhibit MP26** also contains "ZYPERN" newsletters (which Mr Panayides states are the Cyprus Naturally Newsletters), which were published on the website of the Cyprus Trade Centre Berlin in 2013, 2014 and 2016.[22] The 2013 newsletter states that "the production of halloumi cheese takes place in Cyprus under ideal technical conditions. Strict controls at all stages of production, packaging and storage ensure that the raw ingredients are processed into the highest quality products". The 2014 newsletter states that the use of the collective mark (and the certification mark that they have), "is subject to regulations that ensure strict and controlled production in Cyprus in accordance with strict production, labelling and origin requirements. For use of the above-mentioned brands, *registration of the producers in the corresponding registers of authorised users is necessary*". This, therefore, appears to be making a reference to producers needing to be a member of the Foundation, albeit the wording is neither clear or explicit. The 2016 Zypern newsletter[23] also states that Halloumi is registered "as a Collective Community Trade mark that *designates only those products produced in the Republic of Cyprus by using unique raw materials and methods*". Again, this does not explicitly state that the collective mark "represents the group of producers, which are all members of the Foundation".[24] Instead it focuses on the location of the members, and the materials and methods used to create the cheese. Nonetheless, I bear in mind that Mr Panayides does not provide me with any information as to how many readers were exposed to the ZYPERN publications.

45. **Exhibit MP28** contains 3 articles which were published in Austria. In the 2015 Handelsszeitung article, which Mr Panayides states is a "widely available commercial newspaper", it says that "the name "Halloumi" is protected, as a designation of origin (Collective Community Trade Mark), through EU regulations, and can only be used for Halloumi produced in Cyprus". I note that there is no reference to the Foundation, and therefore, by virtue of its wording, the reader could understand it to mean that the designation of origin only relates to the geographical location of Cyprus. I also note that Mr Panayides does not provide any information as to how many readers were exposed to this article. The remaining 2 articles are from the Austrian Regal, and are

[22] **Exhibit MP26** and paragraph 44(c) of Mr Panayide's witness statement.
[23] **Exhibit MP26**
[24] Wording used by Mr Austen to describe a collective mark, located on page 3 of the transcript.

dated December 2016 and November 2017, both of which, therefore, fall after the relevant period. It is only within these articles that they refer to halloumi being "produced in Cyprus under strict production standards and *labelling of origin by a licenced manufacturer*" or "*an authorised user*".

46. While I bear in mind that **exhibit MP29** contains a Polish article from Hurl & Detal (a wholesale and retail magazine) from June 2016,[25] it only refers to the word Halloumi being a registered mark in the EU, and that "Cyprus holds the exclusive right to produce it and name it". It also states that "halloumi cheese is produced in modern manufacturing facilities in Cyprus that fully comply with EU standards". There is, therefore, clearly no reference to the Foundation and the standards it imposes on its members in regard to the production of halloumi. Again, the article appears to read as if it is only the country of Cyprus which has the right to produce it and not the opponent.

47. The evidence clearly shows that the word HALLOUMI has been applied to the packaging of cheese of Cypriot origin, and that a significant amount of it has been sold to the EU and UK during the relevant period. This also does not appear to be disputed by the applicant.[26] However, the applicant submits that "there is no evidence to show that the word "halloumi" is used by producers to guarantee the goods originate from members of the Foundation and would be understood as such by the relevant public".[27] The applicant states that instead, the word HALLOUMI will only be seen as the name of a type of cheese, and has provided evidence, exhibited at **IB-C** to **IA-S**, accompanying Mr Bartlett's witness statement to support this. This includes YouTube screenshots from "The F Word" channel titled "Making Halloumi" dated 3 March 2011, and in its description it states that "Gordon Ramsey makes traditional sheep's milk based Halloumi cheese". I note that the exhibit includes a transcript from parts of the video, which includes Mr Ramsey saying that "*I head to West Sussex to meet one of the only halloumi cheese makers in the UK*". I have also been provided with 2 articles from 2013 which discusses how users can make their own halloumi.[28] This includes an article from the Guardian, which includes a "halloumi cheese recipe" for its users

[25] Paragraph 46 of Mr Panayide's witness statement.
[26] Paragraph 16 of its skeleton argument notes that the invoice evidence clearly shows sales of halloumi in the UK.
[27] Paragraph 31 of the applicant's skeleton argument
[28] **Exhibits IB-F** and **IB-H**

to follow. A blog article from 2018 and a 2020 article from UK's House and Garden magazine also includes a recipe as to how to make halloumi.[29] In response to this evidence, Mr Austen states that "if a recipe simply says halloumi, it is entirely neutral as to whether that signifies the cheese made by members of the Foundation or some over meaning",[30] and that "there is no requirement that every time Halloumi is mentioned in a recipe it also says "collective mark" or similar. He also states that, in relation to The Guardian newspaper article, this is not an advertisement "or use of Halloumi at the point of purchase of the consumer in the supermarket, this is just something that has turned up online". However, Mr Austen fails to acknowledge that if an article from a large publisher in the UK is telling its readers that they can make their own Halloumi cheese, it is indeed undermining that the word Halloumi denotes goods which can only be produced by the Foundation's members based in Cyprus.

48. Mr Bartlett's remaining evidence includes screenshots which he states were taken in May 2024 from a range of businesses (including farms) either offering halloumi cheese for sale or halloumi cheese making kits for sale.[31] The businesses appear to be UK-based, with all of the screenshots taken from a .co.uk website. I note that in some of the descriptions they specifically state that the sheep's milk which made the Halloumi is from Suffolk or Sussex.[32]

49. In response to the above evidence, at the hearing, Mr Austen stated that in regard to the UK halloumi for sale, there is "no indication of the extent of production or whether this even comes close to the millions of kilograms of Halloumi that is produced each year and exported into the UK".[33] In regard to the UK halloumi making kits, Mr Austen highlighted that there was no indication as to how large the sales were of the kits, and that **exhibit VGM1**, which pertains to The Big Cheese Making Kit Limited company (**exhibit IB-D**), shows that its net current assets in 2015 was £100,000 which in relation to the opponent's Halloumi exports is "absolutely tiny use". However, it is misguided to compare the opponent's export numbers to the net current assets of The Big Cheese Making Kit Limited on the basis that they are not equivalent figures. Mr Austen

[29] **Exhibits IB-G** and **IB-I**
[30] Page 6 of the hearing transcript.
[31] **Exhibits IB-C**, **IB-D**, **IB-E**, **IB-K**, **IB-L**, **IB-M**, **IB-N** and **IB-O**.
[32] **Exhibits IB-K** and **IB-L**.
[33] Page 8 of the hearing transcript.

also states that “there is no evidence that consumer perception of the word Halloumi has been changed or influenced at all by this relatively small-scale manufacturer of Halloumi-cheese making kits”.[34] However, this overlooks the consideration as to whether traders of cheese, by 2024, were still potentially unaware that the word “HALLOUMI” is a collective mark only to be used by Foundation members in Cyprus.

50. In its skeleton argument (and, therefore, subsequently at the hearing), the applicant made the followings arguments in relation genuine use of collective marks:

> “29. […] For a collective mark the “essential function” is to guarantee to the relevant public that the goods/services in question originate from one or more members of a particular association.
>
> 30. Accordingly, the tribunal in this case is obliged on the basis of the evidence to determine whether the use of the sign halloumi by the Foundation and its members, during the relevant period fulfilled the essential function of a collective the mark such that consumers may
>
> > “… *understand that the goods in question originate from undertakings which are affiliated with the [Foundation], and thereby distinguish those goods from those originating from undertakings which are not so affiliated*” (***Der Grüne Punkt*** supra at [58]).
>
> It is plain from both ***Gözze*** and ***Grüne Punkt***, as confirmed by ***Walton***, that the focus of attention must be on consumer perception. Whether or not the use of the sign in question is in accordance with its essential function is dependent on what the average consumer would understand by the use of the sign disclosed by the evidence.
>
> 31. There is no evidence to show that the word “halloumi” is used by producers to guarantee the goods originate from members of the Foundation and would be understood as such by the relevant public. In fact, “halloumi” inherently is

[34] Page 7 of the hearing transcript.

not apt to do that (compare for instance “Member of the Chartered Institute of Patent Attorneys”, or “Member of the Guild of Master Craftsmen”). Halloumi is the kind of word which, had the UKIPO examined it (and not immediately rejected it for non-distinctiveness), the Foundation would have been required to have its members use the sign only in the form eg. “HALLOUMI (Collective Mark)” or “Member of the Halloumi Foundation”, etc. pursuant to Schedule 1, Section 4 of the UK Trade Marks Act 1994, and the UKIPO manual, discussed above.

32. The use of halloumi disclosed in the Foundation’s evidence is descriptive and non-distinctive. There is nothing about the use of the sign by the Foundation or its members which suggests that it is anything other than the name of the product itself, that is a kind of cheese. The name of a product is the very antithesis of a distinctive sign for that product.

33. It is significant in this respect that even on packaging for the products supplied by the Foundation’s members, there is nothing to indicate that the word “halloumi” is anything other than the name of the cheese.”

51. I bear in mind that it is not open to me to find that the earlier collective mark is non-distinctive, on the basis that it is generic, because it has been registered.[35] This is also not the determination for me to make on the basis that the earlier collective mark is not subject to invalidation proceedings based upon absolute grounds (that being section 3 of the Act). However, just because the opponent has applied its “HALLOUMI” mark to its registered goods does not mean that this use is automatically genuine. In other words, any use cannot be deemed as genuine use because the mark is registered and therefore assumed to be distinctive, as this would be contrary to my earlier citation of *Der Grüne Punkt*.[36] This assessment is also made in regard to earlier marks which are not collective in nature. As highlighted by Arnold LJ at paragraph

[35] *Formula One Licensing BV v OHIM*, C-196/11P, EU:C:2012:314

[36] This follows the wording used at paragraph 62 of *Foundation for the Protection of the Traditional Cheese of Cyprus named Halloumi and Fontana Food AB* [2024] EWHC 2311 (Ch) in which the opponent acknowledged that the Hearing Officer in that case, at paragraph 38, could not have meant that any use is deemed to be genuine because the mark is registered and assumed distinctive due to the Hearing Officer’s *Der Grüne Punkt citation.*

105(3) of *easyGroup Ltd v Nuclei Ltd & Ors* [2023] EWCA Civ 1247, the use of a trade mark must be consistent with its essential function "which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin".[37]

52. Therefore, my assessment is not focussing on the distinctiveness of the mark. It is registered, and therefore, assumed distinctive. Instead, I must determine whether the way the mark has been used within the evidence before me is genuine. As per paragraphs 57 and 58 of *Der Grüne Punkt*, a collective mark is put to genuine use where it is used in accordance with its essential function. Therefore, the evidence provided by the opponent must establish that its HALLOUMI mark has been used in a way that it distinguishes its members goods from those of other undertakings, to create or preserve and outlet for those goods. I also bear in mind that, based on the evidence before me, the relevant public will include both the general public and traders.

53. In relation to the marketing evidence, it appears that the opponent's variable marketing expenditure went towards the participation in exhibitions and producing advertorial articles. However, there is limited evidence in terms of the opponent's participation in exhibitions that occurred during the relevant period. For example, While the brochure contained in **exhibit MP9** was likely distributed at the 2016 SIAL trade fair in Paris, the brochure only refers to "Halloumi" as a registered collective mark applied to products only in the Republic of Cyprus using raw materials and methods of production unique to the country". Whilst it does confirm its collective mark status, its focus nevertheless appears to be on the country of origin, rather than highlighting that the collective mark is used denote the goods of the members of the Foundation. This is especially important when you bear in mind that the brochure also states that halloumi has been made in Cyprus since at least 1554, and that the name appears to have been adopted at least by 1738. Therefore the brochure confirms that the use of the word "HALLOUMI" significantly pre-dates the formation of the Foundation because the word "HALLOUMI" was only registered as a collective mark in the year 2000. Moreover, in regard to the 2016 SIAL trade fair, I bear in mind that I have not been

[37] *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Centrotherm* at [71]; *Leno* at [29]; *Gözze* at [37], [40]; *Ferrari* at [32].

provided with the specific date as to when it was hosted and therefore I am unable to determine if it occurred within the relevant period. Lastly, in regard to the opponent's attendance of its IFE exhibitions, which as I have noted above, would have fallen within the relevant period, I do not have any narrative or exhibited evidence to confirm the number of UK and EU attendees at these exhibitions, nor do I have any photographic evidence to show how the opponent's goods were exhibited. Moreover, I do not have any evidence in regard to how the attendees of the IFE exhibitions were specifically educated as to how the word HALLOUMI indicates and distinguishes its goods as only originating from Cypriot Foundation members.

54. I bear in mind that the remaining exhibited evidence dated within the relevant period which attempts to educate the relevant public about the status of the word "HALLOUMI" as a collective mark is the 9 German, Austrian, Polish and UK articles referred to above. I have only been provided with the circulation figures for 3 of the German articles, which as I highlight above, is a relatively low number of readers bearing in mind that the German population (and trader base) is likely to be significantly larger. In regard to the remaining articles, I have not been provided with any circulation figures. None of the articles makes any reference to the Foundation, and by virtue of their wording, some appear to convey that to use the collective mark, the Halloumi needs to originate from Cyprus. Whilst this is indeed true, it fails to explain that this is on the basis that the Foundation members can only be from Cyprus. The single UK article dated within the relevant period does not make any reference to the word "HALLOUMI" being a collective mark. The only reference as to the origin of Halloumi is that it can only be produced in Cyprus. The photographic evidence showing the packaging of Halloumi sold in the UK also does not make any reference to the word HALLOUMI being a collective mark. Instead, it predominantly refers to the cheese as being from Cyprus. While the packaging evidence displays the "relevant user's premises code", which is also included within the exhibited invoices, there is no supporting evidence to show how the general public exposed to the packaging would know what this code indicated.

55. In this instance, I find that none of the evidence before me shows that members of the general public have been educated about the trade mark significance attached to the word "HALLOUMI". The general public are likely to perceive "HALLOUMI" as

shown in the examples from the evidence, where it appears accompanied by a clear brand name, as the name for a type of cheese, without any more precise understanding of the origins of the product other than being from Cyprus. At this point, I find it important to consider the submissions of Mr Austen's at the hearing, on behalf of the opponent, in which he claimed that "consumers are educated in associating the names of a cheese with a specific style of cheese and the region from which it comes", for example, consumers know that cheddar is from the UK, camembert is from France, and "Halloumi, you know it is a Cyprus cheese of a certain characteristic", and that "this is the way that cheeses are referred to amongst retail consumers".[38] Whilst this may be true, the purpose of the Halloumi collective mark should be to indicate that the goods are only supplied by members of the Foundation. Whilst the members of the Foundation are only located in Cyprus, I do not consider that knowing the geographical origin of the goods would be enough to show that the mark was being used as a collective mark. I consider that this conflates collective marks with Geographical Indications (GIs) or a protection of designation of origin, which are used on products that have qualities or characteristics attributable to a specific geographical origin.

56. The only evidence which appears to be aimed or directed at traders (instead of the general public) is the opponent's brochure evidence, which was distributed at trade fairs, and the German article evidence published on the Cyprus Trade Centre Berlin website. However, I consider that even taking that into account, the evidence is *"thin in the extreme"*.[39] I find it is not enough to establish that traders in the relevant territory- the EU, which then included the UK- would have been educated about the trade mark significance attached to the word "HALLOUMI". Again, whilst the brochure evidence refers to "HALLOUMI" being a collective mark, I have only been provided with one example of when this brochure was distributed, that being the 2016 SIAL trade fair based in Paris, albeit the date of the event is unknown. Whilst the aforementioned article evidence also refers to "HALLOUMI" being a collective mark, it does not educate the reader as to what this means. There is no reference to the Foundation, and having to be a member to use the collective mark, which is a significant deficiency with the evidence before me. In regard to the opponent's invoices, there is nothing

[38] Page 10 of the hearing transcript.
[39] Inspired by the wording used in *Foundation for the Protection of the Traditional Cheese of Cyprus named Halloumi and Fontana Food AB* [2024] EWHC 2311 (Ch)

which educates the consumer that the word HALLOUMI is a collective mark, and they do not explicitly state the origin of the goods, i.e. they are produced by members of the Foundation. However, it is clear that some of the invoices indicate that the goods are "Cyprus produce" or of "Cyprus origin". I also acknowledge that the invoices display the "relevant user's premises code". Nevertheless, the invoices themselves do not provide any explanation as to what the codes indicate, and the opponent has not provided any evidence (exhibited or narrative) as to how traders have been educated as to the meaning indicated by the codes.

57. Throughout the evidence, the only information in regard to the origin of "HALLOUMI" is that it is from Cyprus and therefore it is more likely that traders will assume that Halloumi must be made in Cyprus in order to use such a name (in the same way that Champagne can only be named as such if it was made in the Champagne region). I also bear in mind that Mr Bartlett's evidence shows that there are traders in the UK who are selling UK "Halloumi cheese", and therefore, it is possible that not all traders are aware of the cheese's geographical origin, and, more specifically, that they are goods which can only be produced by members of the opponent. Therefore, taking all of the above into account, I find that traders are likely to perceive "HALLOUMI" as a type of cheese (some of which will understand that it originates from Cyprus - as indicated by the invoice and packaging evidence), without the precise understanding that these goods are produced by members of the Foundation.

58. I find that the opponent's evidence is insufficient to demonstrate genuine use of the earlier mark as a collective mark, and therefore, the opponent is unable to rely upon its UK00901082965 as an earlier mark under section 5(2)(b).[40] However, in the event I am wrong in my finding, and the opponent's limited attempts to educate traders via its promotional literature is just enough to sustain a finding that traders in the field will perceive the "HALLOUMI" mark as distinctive of cheese produced by the opponent's members, I will proceed with the rest of the decision as if the opponent

[40] Section 5(3) also relies on the opponent having an earlier trade mark. Therefore, as the opponent has failed to establish use of its earlier mark, UK00913527205 may not be relied upon under section 5(3) either. However, for the sake of completeness, I shall nevertheless deal with the matter of reputation later within the section 5(3) part of my decision.

had established use for the full breadth of their specification, on the basis that its halloumi goods have the same purpose and intended use as the broader term "cheese".[41]

Section 5(2)(b) - case law

59. 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;

[41] *Merck KGaA v Merck Sharp & Dohme Corp & Ors* [2017] EWCA Civ 1834

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

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

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

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

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

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

Comparison of goods and services

60. The competing goods and services are as follows:

Opponent's goods	**Applicant's goods**
Class 29 Cheese.	Class 29 Meat, fish, poultry and game; Meat extracts; Preserved, frozen, dried and cooked fruits and vegetables; Jellies,

	jams, compotes; Eggs, milk and milk products; Edible oils and fats. <u>Class 30</u> Coffee, tea, cocoa and artificial coffee; Rice; Tapioca and sago; Flour and preparations made from cereals; Bread, pastry and confectionery; Edible ices; Sugar, honey, treacle; Yeast, baking-powder; Salt; Mustard; Vinegar, sauces (condiments); Spices; Ice. <u>Class 43</u> Services for providing food and drink; Coffee-shop services; Restaurants.

61. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account. In the judgment of the CJEU in *Canon*, Case C-39/97, the court stated at paragraph 23 that:

> "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."

62. Guidance on this issue has come from Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, where he identified the factors for assessing similarity as:

> (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.

63. In *Gérard Meric v OHIM*, Case T- 133/05, the General Court ("GC") stated that:

> "29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut für Lernsysteme v OHIM* – Educational Services (ELS) [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark."

64. 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. In *Boston Scientific Ltd v OHIM*, Case T-325/06, the GC stated that "complementary" means:

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

65. For the purposes of considering the issue of similarity between the parties' aforementioned goods and services, it is permissible to consider groups of terms

collectively where they are sufficiently comparable to be assessed in essentially the same way and for the same reasons (see *Separode Trade Mark* (BL O/399/10) and *BVBA Management, Training en Consultancy v. BeneluxMerkenbureau* [2007] ETMR 35 at paragraphs 30 to 38).

Class 29

Milk products.

66. The applicant's above broader category of "milk products" would encompass the opponent's "cheese", and therefore the goods are identical on the principle outlined in *Meric*.

Milk.

67. The applicant's milk goods are liquid, and the opponent's cheese goods are solid. However, milk is the main ingredient of cheese, and on this basis, they are both generally described as "dairy products". Both milk and cheese are intended for consumption and therefore, to some extent, overlap in method of use, albeit milk is drunk and cheese is eaten. The goods will be sold close together, in the same aisle, and produced by the same manufacturers. Therefore they overlap in trade channels. However, the goods are clearly neither in competition nor complementary. I therefore find them to be similar to a medium degree.

Edible oils and fats.

68. I find that edible oils and fats would encompass butter and margarine. I find that these goods, to an extent, overlap in nature with cheese on the basis that they are minimally processed goods made from milk and may be semi-solid when finished. However, butter and margarine in general are significantly fattier than cheese. Nevertheless, all of these goods are for consumption and can be generally described as foodstuffs, albeit this is not a particularly significant overlap. Cheese and butter may both be used in a similar way (for example, spread/placed on bread or crackers) but there is not in general a direct competitive relationship. The goods are also not

complementary, however, they will be sold in close proximity, in the same aisle of a supermarket, to the same users. On this basis I find that the goods are similar, but only to a low degree.

Eggs.

69. The applicant's above goods are animal products which can either be used as an ingredient in baking or cooking, or can be consumed after being cooked in a particular manner, for example, fried, poached or scrambled. I also note that the opponent's "cheese" goods are also for consumption, and can be used as an ingredient in dishes. However, the goods differ in nature as cheese is a processed product, albeit minimally. Whilst the main ingredient of cheese, that being milk, also comes from an animal, I do not consider that this is sufficient to establish similarity between the goods. Whilst the goods will not be sold on the same shelves, they will be sold in close proximity. The goods are also neither in competition nor complementary. I therefore find that as the goods overlap in a minimal and superficial capacity (both to be eaten and sold close to one another), I do not consider that this is enough to establish similarity. I find them to be dissimilar. However, if I am wrong in this finding, I consider that they are only similar to a very low degree.

Jellies, jams, compotes.

70. The applicant's above goods clearly differ in nature to the opponent's "cheese" (they differ in ingredients, taste, texture, appearance and density). There is a superficial level of overlap in users, purpose and method of use, since they are all foodstuffs. Whilst the goods will all be sold in supermarkets and food retailers, they will not be sold in close proximity. I have no evidence before me to show that the goods would overlap in trade channels, and the average consumer would not consider that the goods come from the same manufacturer, especially as the ingredients and production methods for the goods are clearly very different. While the goods are often eaten together, they are neither in competition nor complementary (as the user would not believe they are important or indispensable to one another, or that they derive from the same undertaking). Therefore, I find the parties' goods to be dissimilar.

Meat, fish, poultry and game; Meat extracts; Preserved, frozen, dried and cooked fruits and vegetables.

71. Whilst some of the applicant's above goods derive from animals or livestock, and the main ingredient of the opponent's "cheese", that being milk, also comes from an animal, as highlighted above, I do not consider that this is sufficient to establish similarity between the goods.

72. The applicant's above goods clearly do not overlap in nature, as their texture, appearance and density are substantially different to cheese. As a result, their taste is also completely different. Whilst the opponent highlights that all of the goods are intended for consumption by the same users (the general public), and they will all be sold in supermarkets or farm shops, the goods will not be sold in close proximity, and more importantly, this type of overlap is minimal and superficial.

73. I also bear in mind that whilst some of the applicant's goods will be refrigerated, as would the opponent's cheese, the goods would be sold in distinct sections (i.e. dairy vs meat). The goods are not in competition, nor are they complementary. I therefore find the goods to be dissimilar.

Class 30

Coffee, tea, cocoa and artificial coffee.

74. Whilst the applicant's above goods and the opponent's "cheese" goods are all intended for consumption by the same users (the general public), the applicant's goods are drunk and the opponent's cheese is eaten.

75. Furthermore, the nature of the goods clearly differ (liquid vs solid). On this basis, they are clearly neither in competition nor complementary outlined in the case law above. Moreover, whilst all of the goods might be sold in supermarkets, they would not be located in close proximity. The goods would also not derive from the same manufacturers. Therefore, I find that the parties' goods are dissimilar.

Rice; Tapioca and sago; Flour and preparations made from cereals; Bread, pastry and confectionery; Edible ices; Sugar, honey, treacle; Yeast, baking-powder; Salt; Mustard; Vinegar, sauces (condiments); Spices; Ice.

76. For the applicant's remaining class 30 goods, I find that whilst all of these goods and the opponent's "cheese" goods are consumed by the general public, this type of overlap is superficial. The applicant's above goods clearly do not overlap in nature, as their texture, appearance and density are substantially different to cheese. All of the goods may be sold in supermarkets, but they would not be located in close proximity, nor produced by the same manufacturers. They are also clearly neither in competition nor complementary. I therefore find that they are dissimilar.

Class 43

Services for providing food and drink; Coffee-shop services; Restaurants.

77. The applicant's above services clearly differ in nature, method of use and purpose to the opponent's "cheese" goods. However, I accept that cheese could be used as an ingredient within the meals served at cafés, restaurants and bars (which is encompassed by "services for providing food and drink"). I also recognise that cheese may be provided without further processing in restaurants, for example as part of a cheeseboard.

78. I also bear in mind that in paragraph 20 of the judgement in *Foundation for the Protection of the Traditional Cheese of Cyprus named Halloumi v Fontana Food AB* [2024] EWHC 2311 (Ch), Tom Mitcheson KC (sitting as a Deputy Judge of the High Court) highlighted that undertakings such as Starbucks, Pizza Express and Nando's sell "food products as well as providing coffee shop or restaurant services" and that "smaller chains of local or individual restaurants might also sell food products which originate from the same source- think of farm shops or undertakings focussing on organic or locally sourced produce". I therefore find that the opponent's cheese could be sold from the premises of the coffee shop or restaurant, or they could be sold in the aisles of supermarkets. On this basis, there could be an overlap in trade channels (with the same undertakings selling/providing all of the goods and services). However,

also found in the High Court, it is unlikely that consumers will go to a restaurant or bar in lieu of the supermarket if they wanted cheese and the average consumer would not assume that cheese served in a restaurant had originated from the same undertaking as the restaurant services. It was also found that "the cross-over necessary for restaurants or coffee shops […] to sell their own cheese is expected to be extremely limited in the mind of the average consumer and the complementarity between cheese and the class 43 services applied for […] will be equally small". I agree with this. Consequently, I find that the parties' goods and services are similar, but to a low degree.

79. It is a prerequisite of section 5(2)(b) that the goods and services be identical or at least similar. The opposition will, therefore, fail in respect of the goods and services that I have found to be dissimilar.[42] The opposition under section 5(2)(b) fails for the following goods:

Class 29 Meat, fish, poultry and game; Meat extracts; Preserved, frozen, dried and cooked fruits and vegetables; Jellies, jams, compotes.[43]

Class 30 Coffee, tea, cocoa and artificial coffee; Rice; Tapioca and sago; Flour and preparations made from cereals; Bread, pastry and confectionery; Edible ices; Sugar, honey, treacle; Yeast, baking-powder; Salt; Mustard; Vinegar, sauces (condiments); Spices; Ice.

The average consumer and the nature of the purchasing act

80. 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 and services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97. In *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc &*

[42] *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA
[43] Whilst in my primary finding I concluded that the applicant's "eggs" are dissimilar to the opponent's goods, I also made a secondary finding that these goods are only similar to a very low degree. On the basis of my secondary finding, I have not listed the term "eggs" here.

Anor, [2025] UKSC 25, the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)* [2024] EWCA Civ 262, where he pointed out that:

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

81. Both parties submit that the relevant public includes both trade consumers, i.e. those in the cheese trade, and the general public. I agree. The cost of the goods in question is likely to vary, however, on balance it is likely to be relatively low. For

members of the general public, the majority of the goods will be purchased relatively frequently, most likely as part of a weekly food shop. Even where the cost of purchase is low, various factors will be taken into consideration such as the cost, taste, nutritional content and the ingredients, especially to reflect the users' dietary requirements which could encompass a vegetarian lifestyle, or any allergens to avoid. Therefore, I consider that the level of attention paid during the purchasing process by the general public will be a medium degree. However, for trade consumers, they will pay a fairly high degree of attention when selecting the goods on the basis that they will be purchasing large quantities and will have particular considerations such as the reliability or capacity of the producer in mind.

82. The average consumer for the applicant's services will be members of the general public. The cost of the purchase is likely to be relatively low and the frequency is likely to vary. The average consumer will take various factors into consideration when selecting the services such as the cost, location, ease of access, availability of products and the inclusivity of dietary requirements. Therefore, I consider that the average consumer will pay a medium degree of attention during the purchasing process.

83. The goods are likely to be obtained by self-selection from shelves of a supermarket, food store, their online equivalents or via food/drink establishments such as cafés and restaurants. The services are likely to be provided by restaurants, bars or catering companies. The services will be selected having viewed street signage, promotional materials, or after undertaking internet searches. Visual considerations for both are, therefore, likely to dominate the selection process. However, I do not discount that there may also be an aural component to the purchase through advice sought from sales assistants or word-of-mouth recommendations.

Comparison of the trade marks

84. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) 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 the trade marks, bearing in mind their distinctive and dominant components. The CJEU stated, at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

> "… it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion."

85. 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.

86. The respective trade marks are shown below:

Opponent's trade mark	Applicant's trade mark
HALLOUMI	**GRILLOUMI BURGER**

87. The opponent's mark consists of the word "HALLOUMI". There are no other elements to contribute to the overall impression which lies in the word itself.

88. The applicant's mark consists of the words "GRILLOUMI BURGER". I consider that the average consumer will perceive the word "GRILLOUMI" as an invented word, and the word "BURGER" will be recognised as an ordinary dictionary word. The word "BURGER" does not appear to be descriptive of any of the applicant's goods which I have found to be similar to the opponent's goods, but it could be slightly allusive of the applicant's services, which include restaurants and cafés which could serve burgers. Nevertheless, as I shall come to discuss in my conceptual comparison, a significant

proportion of consumers would see the words “GRILLOUMI” and “BURGER” as qualifying each other, and thus, they play an equal role in the overall impression.

89. Visually, both of the parties’ marks contain the letters L, L, O, U, M and I. These 6 letters appear at the end of the opponent’s mark, and in the middle of the applicant’s mark. These act as visual points of similarity. However, the opponent’s mark begins with the letters H and A, and the applicant’s mark begins with the letters G, R and I, a position to which the average consumer usually pays more attention.[44] I also bear in mind that where the marks are reasonably long, such as in this case, the differences in a few letters may not have a great impact. Nevertheless, the applicant’s mark also ends in the word BURGER which acts as a notable visual point of difference. I therefore find that, as a whole, the marks are visually similar to between a low and medium degree.

90. Aurally, the opponent’s mark is likely to be pronounced as HA-LOO-ME. The word “GRILLOUMI” at the beginning of the applicant’s mark is likely to be pronounced as either GRILL-OO-ME or GRI-LOO-ME, and the word “BURGER” at the end of the applicant’s mark will be given its ordinary dictionary pronunciation. The first syllable of the marks are aurally dissimilar, and the word “burger” at the end of the applicant’s mark also creates an aural point of difference. On this basis, I find that the parties’ marks are aurally similar to between a low and medium degree.

91. Conceptually, the opponent states that the applicant’s mark “calls to mind the phrase “grilled halloumi burger”, which is a vegetarian alternative dish to a meat burger commonly served in pubs and restaurants, and that “the average consumer would quickly perceive the application to incorporate [a] reference to Halloumi, and be a derivative food product containing Halloumi cheese, and a conceptual association between the marks would result”. The applicant does not accept this submission, and states that the opening element of the word “GRILL” at the beginning of its mark means that it will be “read and heard as GRILL-OUMI and not GRI-LLOUMI”.[45] I accept that some consumers may perceive “GRILLOUMI” as a combination of the words “GRILL”

[44] *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02
[45] Paragraph 55 of the applicant’s skeleton argument.

and “HALLOUMI”, and therefore it evokes the meaning of “grilled halloumi”. This in combination with the word “BURGER” would result in the mark as a whole to evoke the meaning of a “grilled halloumi burger”. For these consumers, there will be a small degree of conceptual overlap with the opponent’s “HALLOUMI” mark.

92. However, I also find that some consumers may not make a link between the letters “LLOUMI” and the word “halloumi” but will still see the ordinary word “GRILL” at the beginning of the mark. I also consider that for these consumers, “GRILLOUMI” will be seen as denoting the name of the “BURGER”. I therefore consider that, for these consumers, the marks are not conceptually similar.

Distinctive character of the earlier trade mark

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

> “22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C108/97 and C-109/97 Windsurfing Chiemsee v Huber and Attenberger [1999] ECR 1-2779, 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 promotion of 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)."

94. 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/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.

95. I will firstly assess whether the evidence filed by the opponent is sufficient to establish that the earlier collective mark had, by the relevant date (which in this case is the priority date of the contested application, that being 25 October 2016) achieved enhanced distinctiveness on the UK market. I have summarised the majority of the opponent's evidence in paragraphs 31 to 46 above.

96. I am unable to determine the turnover generated from 2008 to 2010 because the monetary figures in **exhibit MP6** are redacted. Nevertheless, it is still clear that high volumes of halloumi, being between 1.5 and 2.5 million kilograms, were being purchased and shipped to the UK per year.

97. As noted above, the Cyprus Trade Centre had some involvement with the IFE in London in alternate years between 2003 and 2015. Accompanying his 2017 statement, Mr Dafos provides **exhibit KD4** which he states contains promotional materials relating to the IFE, which was distributed in the official catalogue and pre-show digital newspaper of the IFE 2009, and a screenshot of the banner displayed on the Cyprus Trade Centre's website as at February 2011.

98. **Exhibit KD4** contains a page which confirms that the Cyprus High Commission Trade Centre are at "Stands N5131 & S4211" for the IFE event held on 15 to 18 March 2009 in Excel London. This page also depicts a variety of foodstuff such as olives, olive oil and halloumi, however, no further information is provided regarding the 2009 event. It also contains a banner showing that the IFE in 2011 was held on 13 to 16 March at Excel London. The word "HALLOUMI" is not used on this banner.

99. In addition to the 1 UK article referred to in paragraph 42 above, Mr Dafos provides the following 8 further articles, advertisements and recipes which were published in the UK:[46]

a) A press cutting from the Food & Travel magazine from September 2003 titled "Delicious Cyprus Halloumi Cheese and Herb Triangles". The article says that it is made from "Cyprus Halloumi" and that "Cyprus Halloumi Cheese" can be found in all major supermarkets. This magazine has a circulation of 30,000.

b) A recipe from the Independent magazine, dated 8 May 2004, for minted broad beans with fried halloumi, which is described as a cheese from Cyprus. This magazine has a circulation of 260,259.

c) A recipe from the Food & Travel magazine from June 2004 for "warm salad of griddled Halloumi with broad beans and fresh peas".

d) An article and accompanying recipe from the Evening Standard newspaper dated 30 June 2004. It states that halloumi is "indigenous to Cyprus" and that its "generally made from a combination of goat's and sheep's milk". This newspaper has a circulation of 424,225.

e) A copy of a recipe booklet called "Cyprus Halloumi Cheese Recipies" dated July 2004. The booklet states that it is the traditional white cheese of Cyprus that has been produced by the Island for centuries. Mr Dafos states that this would have been distributed at exhibitions and "mailed to interested parties", and that it had a circulation of 20,000.

f) An advert inserted into the 2005 Association of Greek-Cypriot Travel Agents (UK) Brochure Directory. It states that Cyprus produces halloumi cheese. This advert had a circulation of 30,000.

g) A press cutting from the Food & Travel magazine dated September 2006 which states that Cyprus is the home to halloumi.

[46] **Exhibit KD1 and KD3**

100. I note that none of the above evidence listed in paragraph 99 makes a reference to “HALLOUMI” being a collective mark or indicates that halloumi is produced by members of a particular association.

101. As noted above, the opponent’s mark must be treated as distinctive because it is registered. However, the way in which the mark is presented on its packaging is ambiguous and, although the word “HALLOUMI” has been affixed to cheese goods, I am not persuaded that the function of the word “HALLOUMI” to indicate that it is produced by one of the opponent’s members has been shown. I consider that for the general public, the word “HALLOUMI” is likely to indicate a cheese, without conveying any more specific understanding of the goods’ origins, other than they usually derive from Cyprus. The above UK third party articles and recipes do not indicate that “halloumi” has any special trade mark status. While the invoice and packaging evidence shows use of a manufacturer code, the general public and traders are unlikely to understand its significance, especially as I have no evidence before me to show that they have been educated as to what it means/indicates. There is also no evidence from UK publications which states that “HALLOUMI” is a collective mark; only the German articles appear to state this. There is also nothing within the UK publications (or the German, Austrian or Polish ones) which explain what a collective mark means, i.e. the goods are made by the members of a particular association.

102. Taking the evidence as a whole, I do not think that members of the public encountering the word “HALLOUMI” on packaging for cheese would by the relevant date would have gained any appreciation that “HALLOUMI” is a collective trade mark. Despite the large scale of use (predominantly the sales made in the UK), I do not think that the evidence establishes that, for the general public, the earlier mark had enhanced distinctiveness as a collective mark. I therefore find that earlier mark was weakly distinctive for the general public at the relevant date.

103. As noted in paragraph 56 above, the only evidence which appears to be aimed or directed at traders (instead of the general public) is the German article evidence published on the Cyprus Trade Centre Berlin website, as well as the trade fair and brochure evidence. In this instance, I am unable to give any weight to the German evidence, on the basis that the relevant market for assessing enhanced distinctiveness

is the UK. The aforementioned evidence which pertained to the IFE events in London in 2009, 2011 and 2015 can be considered, however, the evidence filed in regard to these events do not make any reference to the word HALLOUMI or its trade mark significance, and there is no accompanying narrative or photographic evidence as to the way in which the earlier mark was promoted as a collective mark at these trade fairs. Nor have I been provided with any evidence in regard to the number of UK attendees to these events. Furthermore, in regard to the brochure contained in **exhibit MP9**, I have found that it was likely to be distributed at the 2016 SIAL trade fair based in Paris, which again, falls outside of the relevant territory, with no information provided on UK attendees.

104. Taking all of the above into account, I do not think that traders, when encountering the opponent's mark on the packaging of cheese, would have gained any appreciation by the relevant date that "HALLOUMI" is a collective trade mark. I do not think that the evidence establishes that, for traders, the earlier mark had enhanced distinctiveness as a collective mark, and I therefore find it to be weakly distinctive for trade members at the relevant date.

Likelihood of confusion

105. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods and services down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. Nevertheless, the 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, as listed in paragraph 59 above.

106. The CJEU considered how the likelihood of confusion must be assessed where the earlier mark is a collective mark in *Foundation for the Protection of the Traditional Cheese of Cyprus named Halloumi v EUIPO*, C-766/18P, EU:C:2020:170. It said:

"64 However, where, as in the present case, the earlier mark is a collective mark, the essential function of which is, pursuant to Article 66(1) of Regulation No 207/2009, to distinguish the goods or services of the members of the association which is the proprietor from those of other undertakings (judgments of 20 September 2017, *The Tea Board v EUIPO*, C-673/15 P to C-676/15 P, EU:C:2017:702, paragraph 63, and of 12 December 2019, *Der Grüne Punkt v EUIPO*, C-143/19 P, EU:C:2019:1076, paragraph 52), the likelihood of confusion, within the meaning of Article 8(1)(b) of Regulation No 207/2009, must be understood as being the risk that the public might believe that the goods or services covered by the earlier trade mark and those covered by the trade mark applied for all originate from members of the association which is the proprietor of the earlier trade mark or, where appropriate, from undertakings economically linked to those members or to that association.

65 Although, as a result, in the event of opposition by the proprietor of a collective mark, the essential function of that type of mark, as set out in Article 66(1) of Regulation No 207/2009, must be taken into account in order to understand what is meant by likelihood of confusion, within the meaning of Article 8(1)(b) of that regulation, the fact remains that the case-law establishing the criteria with regard to which the existence of such a likelihood must be assessed in practice is applicable to cases concerning an earlier collective mark."

107. I bear in mind that in this decision, I have made the above findings:

- I have found the marks to be visually and aurally similar to between a low and medium degree.
- For consumers who perceive "GRILLOUMI" as a combination of the words "GRILL" and "HALLOUMI", there will be a small degree of conceptual overlap with the opponent's "HALLOUMI" mark. However, for consumers who only recognise the ordinary dictionary word "GRILL" at the beginning of the applicant's "GRILLOUMI" mark, the parties' marks are not conceptually similar.
- I have found the earlier mark to be inherently weakly distinctive for cheese.

- I have identified the average consumer as members of the general public and trade consumers, who will select the goods and services primarily by visual means, although I do not discount an aural component.
- I have concluded that a medium degree of attention will be paid during the purchasing process for the general public.
- I have concluded that a fairly high degree of attention will be paid during the purchasing process for the trade consumers.
- I have found the parties' goods and services to range from being identical to similar to a very low degree.

108. Taking all of the above factors into account, bearing in mind the interdependency principle and the principle of imperfect recollection, I am satisfied that the marks are unlikely to be mistakenly recalled or misremembered as each other. As noted above, the beginning of the marks tend to make more of an impact than the ends, and the average consumer will be paying either a medium degree or fairly high degree of attention when selecting the goods and services. Therefore, I do not consider that the average consumer would misremember the words "GRILLOUMI" for "HALLOUMI". I also do not consider that the average consumer would overlook the word "BURGER" at the end of the applicant's mark, which plays an equal role in the overall impression. Therefore, the differences between the marks are sufficient that there is no risk that the marks will be mistaken for one another. I do not consider there to be a likelihood of direct confusion between the parties' marks, even in respect of its identical goods.

109. It now falls to me to consider the likelihood of indirect confusion. Indirect confusion was described in the following terms by Iain Purvis Q.C. sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10:

> "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."

110. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, 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* (O/219/16), where he said at [16] that "a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion". Arnold LJ agreed, pointing out that there must be a "proper basis" for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

111. I bear in mind that I have found that both members of the public and the trade, when encountering the word "HALLOUMI" on packaging for cheese or invoices, by the relevant date, would have not gained any appreciation that "HALLOUMI" is a collective trade mark. I have therefore found the mark to be weakly distinctive, because it evokes a descriptive meaning, being a type of cheese, which is what the average consumer will overwhelmingly understand when seeing the opponent's "HALLOUMI" mark.

112. Taking all of the above into account, there is, in my view, no reason why the average consumer would believe that the members of the opponent's association who use the earlier mark to indicate the cheese produced by them would have adopted, or be associated with the use of, a perceptibly different mark for the goods and services at issue.

113. The change from "HALLOUMI" to "GRILLOUMI BURGER" is not a logical evolution of a trade mark which would cause the average consumer to believe that the marks were used by the same or connected undertakings. I also find that although the "GRILLOUMI" element of the applicant's mark may call to mind the word "halloumi" in the descriptive sense, any link to "HALLOUMI" in the trade mark sense is just too weak to conclude that the goods and services being offered under "GRILLOUMI BURGER"

are provided by a member of the Foundation.[47] This is the case whether the consumer is a member of the general public (to whom HALLOUMI is weakly distinctive) or the trade (where it is still weakly distinctive, but where more care and attention would be exercised, even for restaurant services).

114. The opposition under section 5(2)(b) fails.

Section 5(3)

115. Section 5(3) of the Act states:

> "5(3) A trade mark which –
>
> > (a) is identical with or similar to an earlier trade mark, shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom (or, in the case of a European Union trade mark or international trade mark (EC), in the European Union) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or repute of the earlier trade mark."

116. Section 5(3A) of the Act states:

> "Subsection (3) applies irrespective of whether the goods and services for which the trade mark is to be registered are identical with, similar to or not similar to those for which the earlier trade mark is protected."

117. Section 5(3) also relies on the opponent having an earlier trade mark. However, as noted above, I found that the opponent has failed to establish use of its earlier collective mark and therefore it may not be relied upon under section 5(3) either. As its collective mark is the only registered earlier right being relied upon by the opponent

[47] See paragraph 39, *Traditional Cheese of Cyprus named Halloumi v Fontana Food AB* [2024] EWHC 2311 (Ch)

in these proceedings, the section 5(3) claim also fails. However, for the sake of completeness, I shall continue with my assessment under section 5(3) in case I was wrong to find that the opponent had not established use of its collective mark for traders.

118. The relevant case law can be found in the following judgments of the CJEU: *General Motors Corp v Yplon SA* (Case C-375/97), *Intel Corporation Inc v CPM United Kingdom Ltd* (Case C-252/07), *Adidas Salomon AG v Fitnessworld Trading Ltd* (Case C-408/01), *L'Oréal SA & Ors v Bellure & Ors* (Case C-487/07), *Interflora Inc & Anor v Marks and Spencer plc & Anor* (Case C-323/09) and *Environmental Manufacturing LLP v OHIM* (Case C-383/12 P). The law appears to be as follows:

a) The reputation of a trade mark must be established in relation to the relevant section of the public as regards the goods or services for which the mark is registered; *General Motors, paragraph 24.*

(b) The trade mark for which protection is sought must be known by a significant part of that relevant public; *General Motors, paragraph 26.*

(c) It is necessary for the public when confronted with the later mark to make a link with the earlier reputed mark, which is the case where the public calls the earlier mark to mind; *Adidas Saloman, paragraph 29* and *Intel, paragraph 63.*

(d) Whether such a link exists must be assessed globally taking account of all relevant factors, including the degree of similarity between the respective marks and between the goods/services, the extent of the overlap between the relevant consumers for those goods/services, and the strength of the earlier mark's reputation and distinctiveness; *Intel, paragraph 42.*

(e) Where a link is established, the owner of the earlier mark must also establish the existence of one or more of the types of injury set out in the section, or there is a serious likelihood that such an injury will occur in the future; Intel, paragraph 68; whether this is the case must also be assessed globally, taking account of all relevant factors; *Intel, paragraph 79.*

(f) The more immediately and strongly the earlier mark is brought to mind by the later mark, the greater the likelihood that use of the latter will take unfair advantage of, or will be detrimental to, the distinctive character or the repute of the earlier mark; *L'Oréal*, paragraph 44.

(g) Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark, and requires evidence of a change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious risk that this will happen in future; *Intel, paragraphs 76 and 77* and *Environmental Manufacturing, paragraph 34.*

(h) The more unique the earlier mark appears, the greater the likelihood that the use of a later identical or similar mark will be detrimental to its distinctive character; *Intel, paragraph 74.*

(i) Detriment to the reputation of the earlier mark is caused when goods or services for which the later mark is used may be perceived by the public in such a way that the power of attraction of the earlier mark is reduced, and occurs particularly where the goods or services offered under the later mark have a characteristic or quality which is liable to have a negative impact of the earlier mark; *L'Oréal v Bellure NV, paragraph 40.*

(j) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the proprietor of the mark in order to create and maintain the mark's image. This covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation; *Interflora,* paragraph 74, and the court's answer to question 1 in *L'Oréal*.

119. The conditions of section 5(3) are cumulative. Firstly, the opponent's and applicant's marks must be identical or similar, and I have discussed their level of similarity in paragraphs 89 to 92 above. Secondly, the opponent must show that its earlier collective mark has achieved a level of knowledge/reputation amongst a significant part of the public. Thirdly, it must have established that the level of reputation and the similarities between the marks will cause the public to make a link between them, in the sense of the opponent's mark being brought to mind by the applicant's mark. Fourthly, assuming that the first, second and third conditions have been met, section 5(3) requires that one or more types of damage claimed will occur. It is unnecessary for the purposes of section 5(3) that the goods and services be similar, although the relative distance between them is one of the factors which must be assessed in deciding whether the public will make a link between the marks.

120. The relevant date for the assessment under section 5(3) is the priority date of the applicant's mark i.e. 25 October 2016.

Reputation

121. In *General Motors*, Case C-375/97, the CJEU held that:

> "25. It cannot be inferred from either the letter or the spirit of Article 5(2) of the Directive that the trade mark must be known by a given percentage of the public so defined.
>
> 26. The degree of knowledge required must be considered to be reached when the earlier mark is known by a significant part of the public concerned by the products or services covered by that trade mark.
>
> 27. In examining whether this condition is fulfilled, the national court must take into consideration all the relevant facts of the case, in particular the market share held by the trade mark, the intensity, geographical extent and duration of its use, and the size of the investment made by the undertaking in promoting it.
> 28. Territorially, the condition is fulfilled when, in the terms of Article 5(2) of the Directive, the trade mark has a reputation 'in the Member State'. In the absence

of any definition of the Community provision in this respect, a trade mark cannot be required to have a reputation 'throughout' the territory of the Member State. It is sufficient for it to exist in a substantial part of it."

122. In determining whether the opponent has demonstrated a reputation for the goods in issue, it is necessary for me to consider whether its mark will be known by a significant part of the public concerned with the goods.

123. In reaching this decision, I must take all of the evidence into account including "the market share held by the trade mark, the intensity, geographical extent and duration of use, and the size of the investment made by the undertakings in promoting it."

124. Earlier in my decision, I found that the distinctive character of the opponent's collective mark had not been enhanced through use. I recognise that reputation is not the same as enhanced distinctive character, but the same factors are to be taken into account in both assessments.[48] I therefore find that for the reasons I have given at paragraphs 96 to 104 above, I do not consider that "HALLOUMI" had a reputation among the UK general public or its traders as a collective trade mark.

125. The evidence before me shows that from 2004 until the relevant date, there are a handful of references to the word "HALLOUMI" being a collective mark in material issued across the EU. However, there is no direct evidence before me in regard to the word "HALLOUMI" being described as a collective mark to UK consumers. Whilst I have found that the brochure contained in **exhibit MP6** was likely distributed at the SIAL trade fair in Paris in 2016, a fair that may have attracted consumers across the globe, I do not have any evidence before me to confirm whether any of the 155,000 visitors were from the UK. It is also unclear as to whether the SIAL trade fair occurred before or after the relevant date. The remaining evidence which refers to the word "HALLOUMI" being a collective mark is the German, Austrian and Polish articles summarised in paragraphs 44 to 46 above. For the articles where circulation numbers are given, I found that these were particularly small. In regard to the German articles

[48] *O2 Worldwide Limited v CX02.COM (UK) Limited*, BL O/393/19, paragraph 39

predominantly aimed at trade members (by virtue of being published on the Cyprus Trade Centre Berlin website) I was not provided with circulation numbers. On this basis, I am unable to determine how many trade members were exposed to them. Nevertheless, none of the above material explicitly states what a collective mark is, i.e. only members of the opponent's Foundation may use the mark to designate that the goods originate from them. On this basis, I find that the evidence is too thin to establish that the mark had a reputation among the general public or trade members in the EU.

126. I remind myself that a link has to be made in the mind of the UK relevant public,[49] and the only remaining UK evidence which could point towards the opponent's earlier mark having a reputation amongst the UK general public and trade members is the attendance of the IFE exhibitions, and the "relevant user's premises code" found on the UK packaging and invoices.

127. Whilst it is clear that the opponent attended IFE exhibitions before the relevant date, I do not have any narrative or exhibited evidence to confirm the number of UK attendees at these exhibitions, and there is no photographic evidence to show how the opponent's goods were exhibited. I also do not have any evidence as to how the IFE attendees were educated on the word HALLOUMI being a collective mark, indicating and distinguishing its goods as only originating from Cypriot Foundation members.[50] In regard to the opponent's product packaging, there is no supporting evidence to show how traders exposed to the invoices or the general public exposed to the packaging would know, or be educated as to what this code indicated. Even if the relevant public were aware that this code was assigned to members of the Foundation, they would have to be educated specifically that only the members of the Foundation can use the collective mark "HALLOUMI". Without this supporting evidence, I cannot conclude that the general public were aware of the codes meaning.

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[49] *China Construction Bank Corporation v Groupement Des Cartes Bancaires*, (Case BL O/281/14)

[50] The evidence contained in **exhibit KD4** pertains to the IFE exhibitions. This exhibit includes a page which confirms that an IFE event was held in March 2009 in London, and depicts a variety of foodstuff such as olives, olive oil and halloumi, however, no further information is provided regarding the 2009 event. The IFE 2011 banner does not use or refer to the word "HALLOUMI" and the Eleftheria newspaper dated March 2015 only mentions that "Halloumi the traditional registered cheese of Cyprus" which will be exhibited at the IFE that month.

128. Taking all of the above into account, I find that the evidence is not persuasive in showing that a significant part of the relevant public knew of the applicant's earlier collective mark at the relevant date. The evidence is therefore insufficient to establish a reputation in the UK.

129. The section 5(3) claim falls at the first hurdle.

CONCLUSION

130. The opposition is unsuccessful in its entirety, and the application may proceed to registration.

COSTS

131. The applicant has been successful and is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 1/2023.

132. In the circumstances, I award the applicant the sum of **£1,850** as a contribution towards the costs of the proceedings. The sum is calculated as follows:

Considering the Notice of opposition and preparing a Counterstatement	£250
Preparing and filing evidence	£700
Preparation for and attendance at hearing	£900
Total	**£1,850**

133. I therefore order Foundation for the Protection of the Traditional Cheese of Cyprus named Halloumi to pay Fontana Food AB the sum of £1,850. 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 5th day of November 2026

L FAYTER

For the Registrar