O/1039/25

CONSOLIDATED PROCEEDINGS

TRADE MARKS ACT 1994

IN THE MATTER OF
TRADE MARK APPLICATIONS NO. UK4014931 & NO. UK3956277
IN THE NAME OF FIND SALT OWNED BY INDEPENDENT RESTAURANTS MANAGEMENT ONE PERSON COMPANY L.L.C
TO REGISTER AS TRADE MARKS

AND

IN CLASS 43

AND

IN THE MATTER OF OPPOSITIONS THERETO
UNDER NUMBERS 446919 & 444665
BY D ET VE ET ÜRÜNLERİ GIDA PAZARLAMA TİCARET ANONİM ŞİRKETİ

BACKGROUND AND PLEADINGS

1. On 16 February 2024 and 13 September 2023, Find Salt Owned By Independent Restaurants Management One Person Company L.L.C**.** ("the applicant") applied to register, respectively, trade mark numbers UK4014931 ("the '931 mark") and UK3956277 ("the '277 mark") in the United Kingdom. The marks are shown on the cover page of this decision. The applications were accepted and were published for opposition purposes on 8 March 2024 and 17 November 2023 respectively. Both applications were made in respect of services in class 43.

2. The applications are opposed by D ET VE ET ÜRÜNLERİ GIDA PAZARLAMA TİCARET ANONİM ŞİRKETİ ("the opponent"). The oppositions were filed on 16 April 2024 and 13 December 2023 respectively, and are based upon Section 5(2)(b) of the Trade Marks Act 1994 ("the Act"). The oppositions are directed against all of the services in the applications. The opponent relies upon the following comparable mark in both oppositions, which have been consolidated:[1]

UK trade mark registration number 916271975
Filing date: 20 January 2017
Registration date: 20 June 2017
Registered in Classes 25 and 43.
Relying only on services in Class 43, as listed under paragraph 22 of this decision.

[1] As confirmed in the official letter dated 31 May 2024, issued to the parties by the Tribunal.

3. Under Article 54 of the Withdrawal Agreement between the UK and the EU, the UK IPO created comparable UK trade marks for all right holders with an existing registered EUTM or International Registration designating the EU. As a result, the opponent's mark was converted into a comparable UK trade mark. Comparable UK marks are now recorded in the UK trade mark register, have the same legal status as if they had been applied for and registered under UK law, and the original filing dates remain the same.[2]

4. The opponent submits that both the applied for marks are highly similar to the earlier mark and that the services covered by each of the marks are identical or highly similar. As a result, the opponent submits that there is a risk of confusion on the part of the public between the application marks and the earlier mark, which includes a likelihood of association. The opponent requests that each of the applications be rejected, and an award of costs be made in its favour.

5. The applicant filed counterstatements denying the claims that the marks are similar. It submits that, notwithstanding the identity and/or similarity of the services at issue, there are insufficient aspects of similarity between the respective marks for there to be any resulting likelihood of confusion between them, which includes the likelihood of association with the opponent's mark. The applicant requests that the oppositions be rejected, that the applications be allowed to proceed to registration, and that an award of costs be made in favour of the applicant.

6. Both parties filed evidence during the evidence rounds. Neither party requested a hearing; only the applicant elected to file written submissions in lieu of a hearing. This decision is taken following careful consideration of the papers on file.

7. In these proceedings, the opponent is represented by Forresters IP LLP and the applicant is represented by Simon Coles of Graham Coles & Co.

[2] See also Tribunal Practice Notice ("TPN") 2/2020 End of Transition Period – impact on tribunal proceedings.

EVIDENCE

The opponent's evidence

8. The opponent filed evidence by way of a witness statement in the name of Ahmet Irfan Kiliç, who is a member of the board of the opponent. The witness statement is dated 16 April 2024 and is accompanied by three exhibits, labelled **Exhibit AIK1** to **Exhibit AIK3** accordingly.

9. The main purpose of the evidence is to demonstrate that the earlier mark has been put to genuine use in the EU and the UK during the relevant periods in relation to the services relied upon.

10. The opponent relies upon the same comparable mark in each of the oppositions before me. I note that in a letter to the parties dated 31 May 2024, the Tribunal confirmed that the evidence already filed in opposition under OP444665 would be considered as filed in relation to the consolidated opposition proceedings.

The applicant's evidence

11. The applicant filed evidence by way of a witness statement dated 17 September 2024 in the name of Simon Coles. Mr Coles is a Chartered Trade Mark Attorney of Graham Coles & Co., and is the recorded representative of the applicant. Alongside the witness statement, Mr Coles adduces one exhibit, labelled **Exhibit SC1**.

12. The main purpose of the evidence is in support of the applicant's claims that the word "SALT" is at most of weak distinctive character in relation to the services at issue. The applicant submits that the evidence shows widespread use of the word SALT as a significant element of the marks promoting the services for providing food and drink. Exhibit SC1 contains extracts from websites and social media sites of 23 different parties, provided to demonstrate such use. I note that the evidence itself does not attempt to refute the opponent's claims of genuine use of the earlier mark during the relevant periods, although this has been submitted in the applicant's written submissions in lieu of a hearing, dated 14 January 2025.

13. I have read and considered the evidence of both parties and the written submissions of the applicant, which I will refer to at the appropriate points in the decision, to the extent I consider necessary.

DECISION

14. 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.

15. The trade mark upon which the opponent relies qualifies as an earlier trade mark under Section 6(1) of the Act. The opponent's trade mark had completed its registration process more than five years before the application dates of both contested marks. As a result, it is, in principle, subject to the provisions on use under Section 6A of the Act. I note that on filing each of its Forms TM8 Notice of Defence and Counterstatement, the applicant has requested that the opponent provides proof of use of the mark for all the services on which it relies, as listed under paragraph 22 of this decision. Consequently, I will begin by assessing whether the earlier mark has been put to genuine use.

Proof of Use

16. The relevant statutory provisions under Section 6A of the Act are as follows:

> (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.

17. As the earlier mark is a comparable mark, paragraph 7 of Part 1, Schedule 2A of the Act is also relevant.

18. Section 100 of the Act states that:

"If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it".

19. The relevant period during which genuine use must be shown is the five years ending with the application date of the contested applications. This was 16 February 2024 for the '931 mark, meaning the relevant period is 17 February 2019 to 16 February 2024; and 13 September 2023 for the '277 mark, with the relevant period being 14 September 2018 to 13 September 2023.

20. As it is a comparable mark, the territory in which use of the opponent's mark must be shown is the EU (including the United Kingdom)[3] prior to IP completion day, being 31 December 2020, and the United Kingdom only thereafter.

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

[3] *Leno Merken BV v Hagelkruis Beheer BV*, Case C-149/11, paragraphs 36, 50 and 55.

“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]; *Leno* at [29]; *Centrotherm* at [71]; *Reber* at [29].

(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].

107. The trade mark proprietor bears the burden of proving genuine use of its trade mark: see section 100 of the 1994 Act and *Ferrari* at [73]-[83]. The General Court of the European Union has repeatedly held that genuine use of a trade mark cannot be proved by means of probabilities or suppositions, but must be demonstrated by solid and objective evidence of effective and sufficient use of the trade mark on the market concerned: see e.g. Case T-78/19 *Lidl Stiftung & Co KG v European Union Intellectual Property Office* [EU:C:2020:166] at [25]. It has also repeatedly held that the smaller the commercial volume of the exploitation of the mark, the more necessary it is for the proprietor to produce additional evidence to dispel any doubts as to the genuineness of its use: see e.g. *Lidl* at [33]. In *Awareness Ltd v Plymouth City Council* [2013] RPC 24 Daniel Alexander QC sitting as the Appointed Person said:

19. For the tribunal to determine in relation to what goods or services there has been genuine use of a mark during the relevant period, it should be provided with clear, precise, detailed and well-supported evidence as to the nature of that use during the period in question from a person properly qualified to know.

…

> 22. … it is not strictly necessary to exhibit any particular kind of documentation but if it is likely that such material would exist and little or none is provided, a tribunal will be justified in rejecting the evidence as insufficiently solid. That is all the more so since the nature and extent of use is likely to be particularly well known to the proprietor itself. A tribunal is entitled to be sceptical of a case of use if, notwithstanding the ease with which it could have been convincingly demonstrated, the material actually provided is inconclusive. By the time the tribunal … comes to take its final decision, the evidence must be sufficiently solid and specific to enable the evaluation of the scope of protection to which the proprietor is legitimately entitled to be properly and fairly undertaken, having regard to the interests of the proprietor, the opponent and, it should be said the public."

Evidence of use

22. Under the Section 5(2)(b) grounds, the opponent has claimed that use has been made of all of the services on which it relies under class 43. I must consider whether, or the extent to which, the evidence shows genuine use of the earlier mark in relation to those services, being:

Services for providing of food and drink; restaurants, self-service restaurants, cafeterias; cafés, canteen services, cocktail lounges, snack bars, catering, pubs; rental of food service equipment used in services providing food and drink; Arranging temporary housing accommodations, namely hotels, motels, holiday camps, boarding houses, rental of tents, youth hostel services, room reservation services; reservation of temporary accommodation, rental of banquet and social function facilities for special occasions, namely, wedding receptions, conferences and meetings; providing day care centers; pet day care services, pet and animal boarding services.

23. I note that the witness statement for the opponent merely gives a brief explanation of the content of the attached exhibits. Given the brevity of the witness statement, I reproduce it, below, in full:

WITNESS STATEMENT

I, **AHMET IRFAN KILIC, MEMBER OF BOARD**, of D ET VE ET ÜRÜNLERI GIDA PAZARLAMA TICARET ANONIM SIRKETI, do hereby state as follows:

1 I am the **MEMBER OF BOARD** of D ET VE ET ÜRÜNLERI GIDA PAZARLAMA TICARET ANONIM SIRKETI and have held this position since **28.10.2022**

2 I am duly authorised to make this statement on behalf of the Opponent.

3 Attached at Exhibit **AIK** 1 please find articles from the UK press regarding the business of the Opponent.

4 Attached at Exhibit **AIK** 2 please find articles from the World press regarding the business of the Opponent.

5 Attached at Exhibit **AIK** 3 please find photos taken from the business of the Opponent at their London restaurant.

I believe the facts in this witness statement are true.

Signed Ahmet İrfan Kılıç
Date 16.04.2024

24. I note the following from the exhibits provided:

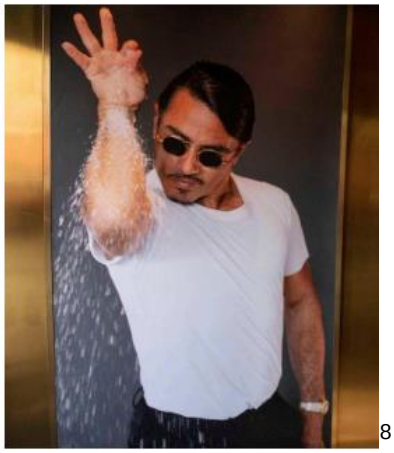
- Salt Bae is a celebrity chef, whose real name is Nusret Gökçe. The evidence shows that Salt Bae founded the restaurant group Nusret UK, which owns the London restaurant "Nusr.Et", based at the Park Tower hotel in Knightsbridge. The restaurant is known for selling dishes at high costs, such as steaks at over £600 and burgers which sell at more than £45.
- Exhibit AIK 1 and AIK 2 comprise various articles from UK and overseas news websites such as, inter alia, The Guardian, The Telegraph, The Standard and MailOnline. They each refer to Salt Bae's restaurant, Nusr.Et, and the restaurant group Nusret UK. In an article from The Telegraph, it states that "Nusr-Et Steakhouse in Knightsbridge raked in millions of pounds in 2022 as the business cashed in on the popularity of owner Nusret Gökçe, otherwise known as Salt Bae."[4] The same article goes on to say that the restaurant opened in September 2021 and racked up around £7m in sales in its first four months alone:

[4] At page 6.

Salt Bae's London restaurant opened in September 2021 and racked up around £7m in sales in its first four months alone.

- I note that one article mentions that the restaurant group is controlled by the Turkish conglomerate Doğuş Group,[5] while another mentions Dream International as the parent company of the Nusr-Et group[6]. I note that the earlier trade mark is owned by D ET VE ET ÜRÜNLERİ GIDA PAZARLAMA TİCARET ANONİM ŞİRKETİ (the opponent), but I found no references to this in the evidence.
- Several of the articles mention that the restaurant company made a profit of £3.3 million in 2022 before taxes, a rise of 44% from the previous year, and The Guardian reports that "sales soared almost 66% to £13.6m" in accounts filed in 2024.[7] These figures are said to come from accounts filed at Companies House, however, these figures have not been verified by the opponent. I also note that 2024 may fall outside the relevant periods, though the reporting will have been retrospective.
- Salt Bae is known for sprinkling salt in such a way that it "bounces off his elbow onto the food". He is almost always pictured wearing round black sunglasses:

[5] See the article dated 19 February 2024, at page 1 of exhibit AIK 1.
[6] At page 10 of exhibit AIK 1.
[7] At page 1 of exhibit AIK 1.

 [8]

- Exhibit AIK 3 is said to comprise photos taken from the business of the opponent at its London restaurant. However, the exhibit is undated and does not provide any evidence of the mark relied upon being used in relation to the services for which the opponent has claimed use.

Assessment on genuine use

25. Whether the use shown is sufficient to constitute genuine use will depend on whether there has been real commercial exploitation of the mark, in the course of trade, sufficient to create or maintain a market for the services at issue in the EU/UK during the relevant five-year period. In making my assessment, I must consider all relevant factors, including:

- the scale and frequency of the use shown;
- the nature of the use shown;
- the services for which use has been shown;
- the nature of those services and the market(s) for them; and
- the geographical extent of the use shown.

26. An assessment of genuine use is a global assessment, which includes looking at the evidential picture as a whole, not whether each individual piece of evidence shows

[8] See pages 6 and 7 of Exhibit AIK 1, being an online article from The Telegraph, dated 19 February 2024.

use by itself. It is possible for an accumulation of evidence to show use, even if individual items of evidence would on their own be insufficient proof: see *New Yorker SHK Jeans GmbH & Co. KG v OHIM*, Case T- 415/09, paragraph 53. I acknowledge that, as per the principles outlined under paragraph 21 of this decision, use of the mark must be more than token, although that use need not always be quantitatively significant for it to be deemed genuine.[9] I also bear in mind that it is not the task of this tribunal to assess economic success or large-scale commercial use, and that there is no *de minimis* rule - even minimal use may qualify as genuine use if it is use warranted, in the economic sector concerned, to maintain or create market shares for the relevant goods.[10]

27. Case law does not specify particular types of documentation that must be adduced in evidence. When considering the evidence, I am entitled "to be sceptical of a case of use if, notwithstanding the ease with which it could have been convincingly demonstrated, the material actually provided is inconclusive": *PLYMOUTH LIFE CENTRE*, BL O/236/13, paragraph 22.

28. I note the applicant's submissions that the opponent's exhibits AIK 1 and 2 consist entirely of press articles dating between 19 and 21 February 2024, i.e. after the relevant period for proof of use in each case.[11] However, I acknowledge that, in some circumstances, evidence can "cast light backwards" if the evidence provided to support genuine use which falls after the relevant period accurately reflects the position during that period.[12] I also acknowledge the applicant's submissions that the evidence filed by the opponent does not provide any reproduction of the opponent's mark, or any variant form thereof that has the same distinctive character. I am mindful that in order to find acceptable use of the trade mark in a variant form, the presentation of the mark within the evidence would have to be such that the distinctive character of the mark was not altered from the form in which it was registered.[13]

[9] *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72] and [76]-[77]; *Leno* at [55].
[10] *Naazneen Investments Ltd v OHIM*, Case T-250/13 at [49].
[11] At page 3 of 9 of the applicant's submissions in lieu of a hearing.
[12] *Red Bull GmbH v Sun Mark Limited and Sea Air & Land Forwarding Limited* [2012] EWHC 1929 (Ch).
[13] See section 46(2) of the Act in relation to use of a trade mark in a variant form.

29. Firstly, I find no evidence of use of the earlier mark in any form in relation to *"rental of food service equipment used in services providing food and drink; Arranging temporary housing accommodations, namely hotels, motels, holiday camps, boarding houses, rental of tents, youth hostel services, room reservation services; reservation of temporary accommodation, rental of banquet and social function facilities for special occasions, namely, wedding receptions, conferences and meetings; providing day care centers; pet day care services, pet and animal boarding services"*, as relied upon by the opponent. The opponent also claims use of the mark for "*Services for providing of food and drink; restaurants, self-service restaurants; cafeterias; cafés, canteen services, cocktail lounges, snack bars, pubs"*. I note that in the case of services, the correct approach in considering the specification is to confine terms which are not clear or precise to the substance or core of their possible meanings.[14] In my view, there is a clear distinction between the type of services that would be expected to be proffered from the likes of cafeterias and snack bars and those services provided by restaurants, albeit that they all provide food and drink in some form. The evidence by way of the various articles all relate to services rendered by a high-end restaurant, and not by cafeterias; cafés, canteen services, cocktail lounges, snack bars, or pubs. I will therefore proceed with my assessment on whether the opponent has provided sufficient evidence of genuine use of the mark in relation to the remaining "*Services for providing of food and drink; restaurants, self-service restaurants*" only.

30. I consider that the pictorial element of the trade mark as a whole, as relied upon in these proceedings, is clearly designed to represent the personification of the chef Salt Bae, as shown at various points within the articles and exemplified above under paragraph 24:

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

31. I acknowledge that use of a trade mark generally encompasses both its independent use and its use as part of another mark taken as a whole or in conjunction with that mark.[15] That being said, while there are numerous mentions of Salt Bae as the chef and restaurant founder within the exhibits, including photographs of him in his customary pose, there is nothing to show use of the trade mark itself being used to provide the services claimed, either on its own as illustrated above, or as part of, or in conjunction with the restaurant name, Nusr.Et. I accept that in the case of certain establishments which provide food and drink, such as Michelin-starred restaurants, it is the renown of the chef which attracts custom, even where the name of that chef is not included as part of the name of the restaurant. However, while the chef himself can be said to be part of the service of providing that food and drink, it is the restaurant overall which provides the whole package, from greeting and seating customers to the service of the food from kitchen to table. To my mind, it is the restaurant name that a significant proportion of consumers will perceive to be the brand behind the services being offered. In this instance, none of the articles actually show "SaltBae" as a sign being used in trade, but refer to the personality that is Salt Bae as the face behind the restaurant group Nusret UK and in particular, behind the London restaurant Nusr.Et. I do not question the association between Salt Bae and Nusr.Et, and I would expect consumers who are already aware of the chef's fame to associate one with the other. I also accept that it can be said that a sign has been used in relation to the services if an average consumer would perceive the user of the sign (e.g. Salt Bae) to have some responsibility for the quality of the services, even if

[15] *Colloseum Holdings AG v Levi Strauss & Co*., Case C-12/1, at [32].

a third party (e.g. Nusr.Et) is considered to be primarily responsible.[16] However, I reiterate that the evidence demonstrates no use at all of the figurative sign "SaltBae"; nor does the evidence provided establish that the trade mark being relied upon would be recognised as the sign under which the services are being offered, per se.

32. I have not been provided with any verified financial figures to support that there has been genuine use of the mark for the services relied upon. Neither have I been provided with the likes of invoices, or details of marketing spend, or how the services provided under the claimed earlier mark as registered have in fact been promoted. While the sales figures and pre-tax profit reported in the press articles seem impressive, not only are they uncorroborated, but the figures do not directly relate to services rendered under the mark at issue. To my mind, the articles indicate that the figures have been generated through the Nusr.Et restaurant as a whole, and not directly through the "SaltBae" trade mark before me.

33. While the exhibits all relate to *Services for providing of food and drink; restaurants; catering*, I consider the evidence filed by the opponent in support of the use of its mark to be unfocussed in relation to the mark being relied upon in these proceedings. It is inconclusive from the exhibits that they relate to the opponent's mark at all. In *Danjaq LLc v OHIM*, Case T-435/05, the General Court stated that

> "23. … it is settled case-law that the essential function of a trade mark is to identify the commercial origin of goods or services, thus enabling the consumer who purchases them to repeat the experience if it proves to be positive, or to avoid it if it proves to be negative, on the occasion of a subsequent acquisition.
>
> 24. Next, it should be pointed out that Dr. No is the title of the first film in the 'James Bond' series and also the name of one of the main characters in the film. Theoretically, those facts cannot prevent the use of the signs Dr. No and Dr. NO as trade marks in order to identify the commercial origin of the films or DVDs.

[16] See *easyGroup Ltd v Nuclei Ltd & Ors* [2023] EWCA Civ 1247, at [68]; and *London Taxi Corporation Ltd v Frazer-Nash Research Ltd* [2017] EWCA Civ 52 (Ch), [2017] FSR 7.

> 25. However, in the present case, an examination of the documents submitted by the applicant shows that the signs Dr. No and Dr. NO do not indicate the commercial origin of the films, but rather their artistic origin. For the average consumer, the signs in question, affixed to the covers of the video cassettes or to the DVDs, help to distinguish that film from other films in the 'James Bond' series. The commercial origin of the film is indicated by other signs, such as '007' or 'James Bond', which are affixed to the covers of the video cassettes or to the DVDs, and which show that its commercial origin is the company producing the films in the 'James Bond' series."

34. Somewhat analogous with the case cited above, it is my view that in the case before me, the evidence provided is insufficient to show the sign "SaltBae" as indicating the commercial origin of the services. I note that in his recent appeal decision, Thomas Mitcheson KC, sitting as Appointed Person, highlighted the importance for parties to gather focussed and relevant material and explain it in evidence in non-use/proof of use proceedings, adding that "the tribunal cannot be expected to draw inferences or to fill in the gaps resulting from deficiencies in the material put forward by a party."[17]

35. I have considered the evidence as a whole. In my view, in spite of the evident connection between the chef Salt Bae and Nusr.Et, and while some informed consumers are likely to assume that Salt Bae has some responsibility for the quality of the services being rendered, this association alone does not constitute genuine use of the sign in relation to the relevant services. The opponent has not provided *any* evidence of use of its mark as registered, or of an acceptable variant form thereof, in trade, during the relevant periods. Accordingly, it is my view that the evidence provided is insufficient to allow me to find that there has been genuine use of the mark for any of the services on which the opponent relies within the relevant period and within the relevant territory. Consequently, the earlier mark cannot be relied upon in these proceedings and so the opposition under section 5(2)(b) fails.

[17] BL O/0852/25, at [43].

CONCLUSION

36. The opposition has failed. Subject to any successful appeal, each of the applications by Find Salt Owned By Independent Restaurants Management One Person Company L.L.C**.** may proceed to registration.

COSTS

37. The applicant has been successful, and is therefore entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice ("TPN") 1/2023. The evidence submitted by the applicant in support of its application largely comprises examples of third party usage of signs which contain the word "salt" in the provision of various catering services. Had I proceeded to make an assessment of a likelihood of confusion between the marks, I do not consider that the evidence would have had any positive bearing on my decision. I therefore make no award for that evidence. I take into consideration that the notices of opposition, evidence and written submissions made by the parties were largely the same for both cases which make up these consolidated proceedings. Applying the guidance in the TPN, I consider the following to be fair:

Considering the notice of opposition and filing a counterstatement x 2:	£500
Considering the opponent's evidence:	£700
Preparing and filing written submissions in lieu of a hearing:	£400
Total:	**£1,600**

38. I therefore order D ET VE ET ÜRÜNLERİ GIDA PAZARLAMA TİCARET ANONİM ŞİRKETİ to pay Find Salt Owned By Independent Restaurants Management One Person Company L.L.C**.** the sum of £1,600. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 6th day of November 2025

Suzanne Hitchings
For the Registrar,
the Comptroller-General