

O-1050-25

TRADE MARKS ACT 1994

IN THE MATTER OF

TRADE MARK APPLICATION NO 3879982

IN THE NAME OF LYNAS FOODSERVICE

FOR THE FOLLOWING MARK:

Isabelle's

IN CLASS 30

AND

OPPOSITION THERETO (UNDER NO. 442338)

BY

ISABEL GORDON

BACKGROUND

1) On 20 February 2023, Lynas Foodservice ('the applicant') applied to register the trade mark 'Isabelle's' in respect of the following goods:

Class 30: Prepared foodstuffs in the form of sauces; sauces; savoury sauces; mayonnaise; ketchups; mayonnaise and ketchup-based spreads; syrups; preparations for making sauces; concentrated sauces; condiments; chutneys; salsa; pastes; salts; seasonings; flavourings; doughs, batters, and mixes therefor; baking preparations and yeasts; flour; sugar; sweet glazes and fillings.

2) The application was published in the Trade Marks Journal on 05 May 2023 and a notice of opposition was subsequently filed by Isabel Gordon ('the opponent') on 04 August 2023. The opposition, as originally filed, was deficient in a number of respects. The opponent was given several opportunities to amend its notice of opposition to address the deficiencies. An admissible notice of opposition was eventually filed on 20 November 2023. The opponent claims that the applicant's mark offends under sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 ('the Act').¹

3) In support of its opposition under sections 5(2)(b) and 5(3) of the Act, the opponent relies upon the following trade mark registration:

- **UKTM 2541821**

(Series of 2)

The logo for 'isabelle's' features the brand name in a lowercase, serif font. A small green leaf icon is positioned above the letter 'l' in 'isabelle's'.

¹ The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.



Class 29: Gluten and wheat free savoury cheese snacks.

Class 30: Bread, pastry and confectionery; cakes; biscuits; savoury snacks but not including savoury snacks wholly or predominantly of rice, pasta, fish, seafood, shellfish, meat or poultry; savoury cereal or flour based snacks, but not including savoury cereal or flour based snacks made wholly or predominantly of fish, seafood, shellfish, meat or poultry; cheese based snacks; part baked pizza bases; part baked pastry products; all the aforesaid goods being gluten and/or wheat free.

Filing date: 15 March 2010

Date of entry in register: 11 February 2011

4) It is claimed that there is a likelihood of confusion between the parties' marks under section 5(2)(b) of the Act. It is also claimed, under section 5(3) of the Act, that the earlier marks in the series have a reputation in the UK and that use of the applicant's mark would lead to an unfair advantage being gained by the applicant.

5) The trade marks in the series relied upon by the opponent are 'earlier marks', in accordance with section 6 of the Act. As the earlier series of marks completed its registration procedure more than five years prior to the date on which the applicant's mark was filed, the marks are subject to the proof of use conditions, as per section 6A of the Act. The opponent made a statement of use in respect of all the goods relied upon.

6) Under section 5(4)(a) of the Act, the opponent relies upon the use of two signs which correspond identically to the two marks covered by its earlier registration, UKTM 2541821. It is said that those signs have been used throughout the UK since 15 March 2010 in respect of the same goods as covered by the opponent's earlier registration. It is claimed that goodwill has been generated under the relevant signs and that use

of the applicant's mark would lead to misrepresentation and damage to that goodwill. I note that, at Section C: Q5 of the Form TM7, which asks for reasons in support of the claim of 'passing off', reference is made to use conducted by an entity named Isabelle's Cuisine Ltd. However, it will be recalled that the opposition has been filed in the name of Isabel Gordon. This discrepancy is important because, in accordance with The Trade Marks (Relative Grounds) Order 2007, the opponent must be the proprietor of all marks and rights upon which it relies under Section 5 of the Act. On the face of the pleaded case under section 5(4)(a), it appears that the proprietor of any accrued goodwill is claimed to be Isabel's Cuisine Ltd, not Isabel Gordon personally. I will return to this matter later when I consider the claim under section 5(4)(a) of the Act.

7) The applicant filed a counterstatement. It puts the opponent to proof of use of its earlier series of marks and to proof of reputation and goodwill. It admits that the respective verbal elements of the marks are similar and denies the opponent's other claims.

8) The applicant is represented by Maclachlan IP (formerly known as Ansons); the opponent is represented by The Trademark Helpline.

9) The opponent's evidence consists of a witness statement in the name of Isabel Gordon² with exhibits IG1-IG9 thereto. The opponent also filed accompanying submissions.³ The applicant did not file evidence or submissions during the evidence rounds. Neither party requested a hearing; only the applicant filed written submissions in lieu.⁴ I now make this decision having carefully considered all the papers before me.

Proof of use

10) Section 6A of the Act states:

“(1) This section applies where

² Dated 11 July 2024

³ Filed on 12 July 2024

⁴ Dated 26 November 2024

- (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.”

11) Further, 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.”

12) 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 Bunderversammlung 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 Marken 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].”

13) The earlier registration is for a series of two marks. The only difference between those two marks is that one is presented in colour and the other is not. This is not a material difference and therefore I will refer to them both in the singular as ‘the earlier mark’. The relevant period in which the opponent must show genuine use of its earlier mark is the five-year period ending on the date of filing of the applicant’s mark, namely **21 February 2018 to 20 February 2023**. I now turn to consider whether the evidence filed by the opponent establishes such use.

14) In her evidence, Ms Gordon explains that she has been a director of Isabel's Cuisine Ltd ('the company'), which she describes as 'my business', since June 2005. I am therefore satisfied that use by that company is use with Ms Gordon's consent. The business began with the production of 'Pizza -Express style dough balls' which were made frozen and ready to bake. She goes on to state that 'today' the business produces pizza base, dough ball, batter and Yorkshire pudding mixes which are gluten and wheat free.

15) It is said that the earlier marks in the series are prominently displayed on the company's website, all marketing materials, packaging and events. In support of this, Ms Gordon provides the following exhibits:

- **Exhibit IG1:** This consists of two undated screenshots from www.isabelsfreefrom.co.uk. The earlier mark is positioned at the top of each page and on the packaging of gluten-free goods. All of the goods are mixes for making up into Yorkshire puddings, batter, baked donuts, dough balls, pizza bases, crepes, waffles and chocolate puddings. There is also cassava flour and gravy granules.
- **Exhibit IG2:** This consists of undated 'marketing' material. No further context is given about how, when or to whom these 'marketing' materials were distributed. They appear to be advertisements showing use of the earlier mark on cassava flour and various gluten/wheat-free mixes of the same kind as those shown in exhibit IG1.
- **Exhibit IG3:** This consists of undated examples of 'product packaging' bearing the earlier mark. The goods shown are the same kind of goods as those shown in exhibits IG1 and IG2; there are also images of boxes bearing the mark.
- **Exhibit IG4:** This consists of undated photographs of 'use at events and shows'. The earlier mark is visible on stands and stalls selling goods of the same kind as those shown in exhibits IG1, IG2 and IG3.

16) Ms Gordon states that the company has built a reputation amongst its clients and has a steady flow of sales via the website, particularly of gluten and wheat-free foodstuffs. The company's goods are also retailed via various 'high-profile third-party vendors'. In support of this Ms Gordon provides the following exhibits:

- **Exhibit IG5:** This consists of undated images of goods bearing the earlier mark on i) shelves at Asda (dough ball mix and pizza base mix), ii) shelves at Morrisons (pizza base mix, dough ball mix, baked donut mix and batter mix), iii) the Ocado website (baked donut mix) and iv) the Amazon website (various goods of the kind shown in exhibits IG1 – IG3).
- **Exhibit IG6:** This consists of four dated invoices, each bearing the earlier mark in the top left-hand corner and issued by Isabel's Cuisine Ltd. The first invoice is dated 21 September 2017 and is for various mixes (for making up into pizza bases, dough balls and Yorkshire puddings). Gravy granules are also listed. The total amount is over £800; the second is dated 24 October 2017 for various mixes (batter, dough balls, Yorkshire pudding etc.) and gravy granules for a total amount of just over £270; the third is dated 14 December 2017 for various mixes (batter, dough balls, desserts etc.) for a total amount of just over £2300; the fourth is dated 18 November 2019 for pizza base mix and batter mix for total amount of just over £1000. All of the customers details, including their location, has been redacted on all four invoices. Only the fourth invoice is dated within the relevant period for proving genuine use.

17) Ms Gordon states that in 2016 and 2017 Isabel's won awards for its products and has also garnered a positive reputation amongst its customers. In support of this, the following exhibits are provided:

- **Exhibit IG7:** This consists of two 'Free From Food Awards' certificates from Ireland dated 2016. The first is a 'Gold' award for Isabel's pizza mix; the second is a 'Merit' award for Isabel's batter mix. A third award is a 'Gold' award from the 'Free From Food Awards 2017' for Isabel's Cuisine Yorkshire

pudding mix. None of these fall within the relevant period for proving genuine use.

- **Exhibit IG8:** This is an undated document entitled ‘customer feedback to the question ‘why should you stock Isabel’s products?’’. There are 74 comments listed from individuals from the UK. Some provide positive feedback about Isabel’s products such as pizza base mix, dough ball mix and pudding mix; others express the general need/desire for more gluten-free products in stores. No further context is provided to explain precisely when or how these comments were obtained.

18) Ms Gordon states that Isabel’s has established a social media presence and regularly interacts with its customer base via Facebook and X. In support of this, the following exhibit is provided:

- **Exhibit IG9:** This consists of snapshots from ‘Isabel’s’ social media accounts on Facebook, X and Instagram. All show the earlier mark being used in respect of various mixes and flour of the kind shown elsewhere in the evidence. The Facebook page has 2000 followers; the X page has 9,411 followers; the Instagram page has 2,293 followers. It is not clear that any of these come from before the filing date of the applicant’s mark or, indeed, from within the relevant period for proving genuine use.

19) That completes my summary of the opponent’s evidence of use.

Assessment of the evidence

20) As the case law above makes clear, genuine use requires that ‘the use must be by way of real commercial exploitation of the mark on the market for the relevant goods’. I find that the evidence before me does not establish such use for the reasons set out below.

21) Firstly, the evidence of use before me all shows use in relation to various mixes for making up into certain foodstuffs, gravy granules and cassava flour. As the applicant points out⁵, the specification of the opponent's earlier registration does not appear to cover such goods. Furthermore, and even without that fundamental problem, the vast majority of the evidence before me is, in any event, undated.⁶ Therefore, I cannot tell if such evidence constitutes examples of, or is representative of, the way the earlier mark was used in the relevant period. The awards⁷ in evidence are also from outside the relevant period (being from 2016 and 2017) and are therefore irrelevant for that reason alone. The only piece of evidence which clearly falls within the relevant period is a single invoice, dated 18 November 2019, which, in any event, covers goods which do not appear to fall within the earlier specification (the goods in the invoice being pizza base mix and batter mix). The other three invoices are dated outside the relevant period.⁸ A further problem with the evidence is that, in the absence of any explanation about how and when the 74 'customer feedback' comments⁹ were received, these shed no light on the scale or nature of use within the relevant period for any of the goods covered by the earlier mark. Indeed, on the face of them, the 'feedback' comments do not appear to relate to any of the relevant earlier goods. The social media pages¹⁰ are also not clearly from within the relevant period and therefore these also do no assist the opponent.

22) The opponent has failed to establish genuine use in relation to any of the goods relied upon in the relevant period. Consequently, the opponent cannot rely upon its earlier series of marks under sections 5(2)(b) or 5(3) of the Act and the opposition on those grounds must fail.

Section 5(4)(a)

23) Section 5(4)(a) states:

⁵ Applicant's submissions in lieu of 26 November 2024, [32] – [35]

⁶ Exhibits IG1 – IG5 and IG9

⁷ Exhibit IG7

⁸ Exhibit IG6

⁹ Exhibit IG8

¹⁰ Exhibit IG9

“(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented-

(a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, where the condition in subsection (4A) is met,

(aa) [...]

(b) [...]

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of an “earlier right” in relation to the trade mark.”

24) Subsection (4A) of Section 5 states:

“(4A) The condition mentioned in subsection (4)(a) is that the rights to the unregistered trade mark or other sign were acquired prior to the date of application for registration of the trade mark or date of the priority claimed for that application.”

25) In *Discount Outlet v Feel Good UK*, [2017] EWHC 1400 IPEC, Her Honour Judge Melissa Clarke, sitting as a deputy Judge of the High Court, conveniently summarised the essential requirements of the law of passing off as follows:

“55. The elements necessary to reach a finding of passing off are the ‘classical trinity’ of that tort as described by Lord Oliver in the *Jif Lemon* case (*Reckitt & Colman Product v Borden* [1990] 1 WLR 491 HL, [1990] RPC 341, HL), namely goodwill or reputation; misrepresentation leading to deception or a likelihood of deception; and damage resulting from the misrepresentation. The burden is on the Claimants to satisfy me of all three limbs.

56. In relation to deception, the court must assess whether “*a substantial number*” of the Claimants' customers or potential customers are deceived, but it is not necessary to show that all or even most of them are deceived (per

Interflora Inc v Marks and Spencer Plc [2012] EWCA Civ 1501, [2013] FSR 21).”

Relevant date

26) In *Advanced Perimeter Systems Limited v Multisys Computers Limited*, BL O-410-11, Mr Daniel Alexander QC (as he then was), sitting as the Appointed Person, considered the relevant date for the purposes of section 5(4)(a) of the Act and concluded as follows:

“43. In *SWORDERS TM* O-212-06 Mr Alan James acting for the Registrar well summarised the position in s.5(4)(a) proceedings as follows:

‘Strictly, the relevant date for assessing whether s.5(4)(a) applies is always the date of the application for registration or, if there is a priority date, that date: see Article 4 of Directive 89/104. However, where the applicant has used the mark before the date of the application it is necessary to consider what the position would have been at the date of the start of the behaviour complained about, and then to assess whether the position would have been any different at the later date when the application was made.’”

In the instant case, the opponent must show that it had the necessary goodwill at the filing date of the contested mark, namely **20 February 2023**.

What is Goodwill?

27) In *Inland Revenue Commissioners v Muller & Co's Margarine Ltd* [1901] AC 217 (HOL) the Court stated:

“What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings in custom. It is the one thing

which distinguishes an old-established business from a new business at its first start.”

28) In terms of the evidence that is required to establish the existence of goodwill, in *South Cone Incorporated v Jack Bessant, Dominic Greensmith, Kenwyn House and Gary Stringer (a partnership)* [2002] RPC 19 (HC), Pumfrey J. stated:

“27. There is one major problem in assessing a passing of claim on paper, as will normally happen in the Registry. This is the cogency of the evidence of reputation and its extent. It seems to me that in any case in which this ground of opposition is raised the registrar is entitled to be presented with evidence which at least raises a prima facie case that the opponent's reputation extends to the goods comprised in the applicant's specification of goods. The requirements of the objection itself are considerably more stringent than the enquiry under s.11 of the 1938 Act (see *Smith Hayden & Co. Ltd's Application (OVAX)* (1946) 63 R.P.C. 97 as qualified by *BALI Trade Mark [1969] R.P.C. 472*). Thus the evidence will include evidence from the trade as to reputation; evidence as to the manner in which the goods are traded or the services supplied; and so on.

28. Evidence of reputation comes primarily from the trade and the public, and will be supported by evidence of the extent of use. To be useful, the evidence must be directed to the relevant date. Once raised, the applicant must rebut the prima facie case. Obviously, he does not need to show that passing off will not occur, but he must produce sufficient cogent evidence to satisfy the hearing officer that it is not shown on the balance of probabilities that passing off will occur.”

29) However, in *Minimax GmbH & Co KG v Chubb Fire Limited* [2008] EWHC 1960 (Pat) Floyd J. (as he then was) stated that:

“[The above] observations are obviously intended as helpful guidelines as to the way in which a person relying on section 5(4)(a) can raise a case to be answered of passing off. I do not understand Pumfrey J to be laying down any

absolute requirements as to the nature of evidence which needs to be filed in every case. The essential is that the evidence should show, at least prima facie, that the opponent's reputation extends to the goods comprised in the application in the applicant's specification of goods. It must also do so as of the relevant date, which is, at least in the first instance, the date of application.”

Standing of the opponent

30) I remind myself of my earlier observation that the opponent in these proceedings is Isabel Gordon and that it is, therefore, she who must be the proprietor of any goodwill that has been generated. However, the pleaded case appears to rely upon use made by Isabel's Cuisine Ltd. Indeed, the evidence also appears to indicate that the use of the signs relied upon has been by the latter rather than the former (as per, for example, the invoices in evidence which are from Isabel's Cuisine Ltd). This means that any goodwill that has been generated would appear, on the face of things, to have accrued to Isabel Cuisine Ltd, not to Isabel Gordon personally. In this connection, I am mindful that, in appropriate circumstances, the registrar has the power to order joinder or substitution of an opponent even where the proceedings are at a late stage.¹¹ However, in the light of my findings below, there is, ultimately, no benefit in considering whether such a course of action is appropriate in this case.

Has the requisite goodwill been established?

31) Earlier in this decision, I made a number of comments about the deficiencies in the opponent's evidence when it came to establishing genuine use. A number of those deficiencies are also relevant when it comes to the establishment of goodwill. A key problem for the opponent in establishing the necessary goodwill at the relevant date is that the vast majority of the evidence before me is undated and therefore I cannot tell if such evidence comes from before that date. It is also not clear if the social media pages come from before the relevant date. There are also no total turnover or marketing figures in the evidence from before the relevant date to gauge the scale of

¹¹ See, for example, the decision of Professor Ruth Annand, as the Appointed Person, in opposition proceedings in Tao Asian Bistro, BL O/004/11, [28] – [33].

use. Further, whilst all of the invoices *do* come from before the relevant date, there are only four in total and they do not, in any event, cover the kinds of goods which have been relied upon in the opponent's pleaded case. As for the awards from 2016 and 2017, two of these come from Ireland and therefore, on the face of them, they are not supportive of the existence of any goodwill in the UK prior to the relevant date; they are also in respect of 'pizza mix' and 'batter mix', which are not relied upon in the pleaded case. The award from 2017 is also in respect of 'Yorkshire pudding mix' which does not fall within the goods relied upon under this ground. The document listing various customers' feedback also does nothing to assist the opponent absent further explanation to show how, when and in what context, those comments were received. In any event, where the nature of the product is mentioned in the 'feedback', they are not the kind of products which have been relied open in the opponent's pleaded case. For all of these reasons, I find that the requisite goodwill has not been established at the relevant date, in respect of the goods relied upon. Without goodwill, there can be no misrepresentation or damage. The claim under section 5(4)(a) of the Act fails.

OVERALL OUTCOME

32) **The opposition fails.**

COSTS

33) The applicant has been successful and is entitled to an award of costs. Using the scale in Tribunal Practice Notice 1/2023 as guidance, I award the applicant costs on the following basis:

Preparing a counterstatement and considering the other side's statement	£300
Written submissions in lieu of a hearing	£350
Total:	£650

34) I order Isabel Gordon to pay Lynas Foodservice the sum of **£650**. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 12th day of November 2025

**Beverley Hedley
For the Registrar**