

O/1112/25

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. 4051353  
IN THE NAME OF PLANTED VENTURES, LLC  
TO REGISTER THE FOLLOWING TRADE MARK:

**PEOPLE WHO GIVE A CROP**

IN CLASSES 29 AND 30

AND

IN THE MATTER OF OPPOSITION THERETO  
UNDER NO. 449999  
BY CROP'S N.V.

## Background and pleadings

1. PLANTED VENTURES, LLC (“the applicant”) applied to register the trade mark “PEOPLE WHO GIVE A CROP” (“the applicant’s mark”) in the UK on 14 May 2024, under number 4051353. It was accepted and published in the Trade Marks Journal on 9 August 2024 in respect of the following goods:

*Class 29: Frozen, prepared and packaged meals consisting primarily of meat, fish, poultry or vegetables; pre-packaged ready-to-eat prepared foods, namely, açai berry bowls containing processed açai berries.*

*Class 30: Frozen, prepared and packaged meals consisting primarily of pasta, grain or rice; frozen pizzas; frozen pasta; noodle-based prepared meals.*

2. CROP’S N.V. (“the opponent”) opposes the trade mark on the basis of section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opposition is directed at all the goods. The opponent relies upon the following trade marks and the following goods for which they are registered:

(i) **CROP’S**

UK registration no. 801379900

Filing date: 5 September 2017

Registration date: 22 May 2018

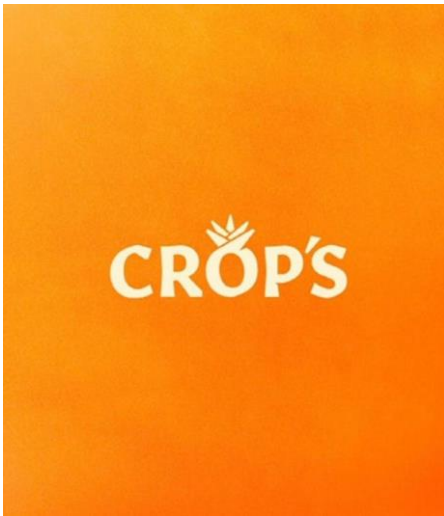
Goods registered:

*Class 29: Frozen vegetables; prepared vegetables; processed vegetables; preserved vegetables; vegetable burgers (processed vegetable patties); cheese products for use in cheese burgers; snacks based on vegetables; ready-to-eat vegetables; prepared fruit; frozen fruit; ready-to-eat deep-frozen meals consisting mainly of vegetables; prepared meals consisting mainly of meat; prepared meals consisting mainly of fish; soups; fruit and vegetable puree.*

*Class 30: Herbal mixtures; herb sauces; processed herbs; frozen herbs; cooked rice; frozen ready-to-eat rice; frozen pasta; rice-based snacks; chilled desserts; prepared pasta-based meals; sandwiches; fruit sauces.*

("the UK mark")

(ii)



International registration no. 1633739

International registration date and date of UK designation: 8 September 2021

Priority date: 9 March 2021

Date of protection in the UK: 26 May 2022

Goods relied on:

Class 29: Preserved, frozen, dried and cooked fruits; fruit desserts; fruit rinds; fruit peel; fruit paste; fruit snacks; fruit chips; fruit salads; fruit jams; fruit marmalade; fruit pulps; frosted fruit; fruit jellies; fruit leathers; sliced fruit; fruit purees; fruit pectin; crystallised fruit; candied fruit; fruit preserves; fruit conserves; fruit powders; stewed fruit; fruit spreads; prepared fruits; processed fruits; cut fruits; canned fruits; tinned fruits; fermented fruits; frosted fruits; glazed fruits; pickled fruits; bottled fruits; powdered fruits; fruit flavoured yoghurts; dried fruit mixes; candied fruit snacks; dried fruit products; processed lychee fruit; pressed fruit paste; edible crystallised fruits; fruit juices for cooking; prepared dried fruit mixes; fruit-based snack food; dried fruit-based snacks; fruit based snack foods; arrangements of cut fruit; arrangements of processed fruit; fruits preserved in alcohol; mincemeat made from fruits; milk beverages containing fruits; milk drinks containing fruits; fruits in preserved form; fruit-based meal replacement bars; fruit-based fillings for cobblers;

mixtures of fruit and nuts; fruit-based concentrate for cooking; spreads consisting mainly of fruits; dried fruits in powder form; fruit- and nut-based snack bars; milk-based beverages containing fruit juice; fruit-based fillings for cakes and pies; jellies, jams, compotes, fruit and vegetable spreads; processed fruits, fungi, vegetables, nuts and pulses; snack mixes consisting of dehydrated fruit and processed nuts; snack mixes consisting of processed fruits and processed nuts; fruit puree portions; processed fruit for smoothies; processed fruit for drinks; processed fruit for bakery products; processed fruit for pastry products.

Class 30: Fruit pies; fruit cakes; fruit vinegar; fruit sugar; fruit ices; fruit sauces; fruit pastries; fruit breads; fruit teas; fruit tea infusions; fruit confectionery; fruited scones; iced fruit cakes; fruit cake snacks; biscuits containing fruit; coulis (fruit-) [sauces]; fruit coulis [sauces]; edible fruit ices; pastries with fruit; fruit ice creams; fruit drops [confectionery]; fruit ice bars; fruit jelly candy; chocolate coated fruits; fruited malt loaf; breakfast cereals containing fruit; achar pachranga (fruit pickle); ice cream with fruit; biscuits flavoured with fruit; crackers flavoured with fruit; fruit flavourings, except essences; flavourings made from fruits; pastries containing creams and fruit; bread casings filled with fruit; confectionery having liquid fruit fillings; sweeteners consisting of fruit concentrates; oat clusters containing dried fruit; fruit flavourings, other than essential oils; fruit flavoured tea [other than medicinal]; sugar for making conserves of fruit; tea-based beverages with fruit flavouring; sweetmeats [candy] being flavoured with fruit; fruit gums [other than for medical use]; fruit tea [other than for medical purposes]; natural sweeteners in the form of fruit concentrates; chewing sweets (non-medicated -) having liquid fruit fillings; fruit flavourings for food or beverages, except essences; filled yeast dough with fillings consisting of fruits; breakfast cereals containing a mixture of fruit and fibre; fruit flavoured water ices in the form of lollipops; food mixtures consisting of cereal flakes and dried fruits; snack bars containing a mixture of grains, nuts and dried fruit [confectionery].

("the IR")

3. The opponent's marks qualify as 'earlier trade marks' in accordance with section 6 of the Act. The UK mark had been registered for more than five years at the filing date of the applicant's mark and is, therefore, subject to the use requirements in section 6A of the Act. However, the IR is not subject to the use provisions as it had not been protected for more than five years at the filing date of the applicant's mark. Although the opponent originally made a statement of use in relation to all the goods of the UK mark, I note that the statement of use filed later in the evidence rounds was made in relation to the following list of limited goods:

Class 29: frozen vegetables; prepared vegetables; processed vegetables; preserved vegetables; snacks based on vegetables; ready-to-eat vegetables; prepared fruit; frozen fruit; ready-to-eat deep-frozen meals consisting mainly of vegetables; prepared meals consisting mainly of meat; prepared meals consisting mainly of fish; soups; fruit and vegetable purees.

Class 30: processed herbs; frozen herbs; cooked rice; frozen ready-to-eat rice; frozen pasta; rice-based snacks; chilled desserts; prepared pasta-based meals; fruit sauces.

4. In its statement of grounds, the opponent contends that the competing marks are similar and that the applicant's goods are either identical or highly similar to the opponent's goods. It argues that therefore there is a likelihood of confusion, including a likelihood of association.

5. The applicant filed a counterstatement, denying the ground of opposition. It also indicated that it would require the opponent to provide proof of use of its UK mark.

6. The opponent is professionally represented by KOB N.V. and the applicant is represented by Appleyard Lees IP LLP. Only the opponent filed evidence in these proceedings. Both the opponent and the applicant filed submissions during the evidence rounds. No hearing was requested but both parties filed written submissions in lieu. This decision is taken following careful consideration of all the papers before me.

## **Relevance of EU law**

7. 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**

8. The opponent's evidence consists of a witness statement provided by Mr Pieter Coppens and Mr Wouter Tally (dated 14 February 2025), a statement of use form and 13 exhibits (PCWT1-PCWT11). Mr Coppens is the permanent representative of Clep Consulting b.v. which is the Chief Financial Officer of the opponent, which is a position that he has held since 1 July 2022. Mr Tally is the Legal Manager of the opponent, which is a position that he has held since 2 August 2021. They provide evidence of use of the opponent's mark.

9. I have taken all the evidence into account in reaching my decision and will refer to it below where necessary.

## **Approach**

10. For the purposes of this decision, I will assume that the UK mark has been used in relation to all the goods for which the opponent made a statement of use, returning to consider the issue of use should it become necessary for me to do so.

11. Moreover, I consider that the UK mark represents the opponent's strongest case due to the greater dominance of the similar component "CROP'S" within the UK mark and the lack of a figurative element and use of colour (such as appears in the IR). In the event that the opposition fails on the basis of the UK mark, the IR will not improve the opponent's position. As such, I will determine the opponent's claim on the basis of the UK mark only, referring to it as "the opponent's mark" from this point onwards.

## Section 5(2)(b)

12. Section 5(2)(b) of the Act is as follows:

“5(2) A trade mark shall not be registered if because-

(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”.

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

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

### *The principles*

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

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

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

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

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

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

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

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

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

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

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

## Comparison of goods

15. In *Canon*<sup>1</sup>, the Court of Justice of the European Union (“CJEU”) stated, at paragraph 23 of its judgment, that when considering whether goods are similar, all the relevant factors relating to the goods should be taken into account. The CJEU stated that those factors include their nature, intended purpose, method of use and whether they are in competition with each other or are complementary.

16. The relevant factors identified by Jacob J. (as he then was) in *Treat*<sup>2</sup> for assessing similarity were:

- (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.

17. In *Kurt Hesse v OHIM*<sup>3</sup>, 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 Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*<sup>4</sup>, the General Court (“GC”) stated that “complementary” means:

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<sup>1</sup> Case C-39/97

<sup>2</sup> [1996] R.P.C. 281

<sup>3</sup> Case C-50/15 P

<sup>4</sup> Case T-325/06

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

18. In *Gérard Meric v OHIM*<sup>5</sup>, the General Court (“GC”) confirmed that even if goods are not worded identically, they can still be considered identical if one term falls within the scope of another (or vice versa):

“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 fur 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.”

19. The goods to be compared as follows:

<b>The opponent’s goods</b>	<b>The applicant’s goods</b>
<p><u>Class 29</u>: Frozen vegetables; prepared vegetables; processed vegetables; preserved vegetables; snacks based on vegetables; ready-to-eat vegetables; prepared fruit; frozen fruit; ready-to-eat deep-frozen meals consisting mainly of vegetables; prepared meals consisting mainly of meat; prepared meals consisting mainly of fish; soups; fruit and vegetable purees.</p> <p><u>Class 30</u>: Processed herbs; frozen herbs; cooked rice; frozen ready-to-eat rice; frozen pasta; rice-based snacks; chilled</p>	<p><u>Class 29</u>: Frozen, prepared and packaged meals consisting primarily of meat, fish, poultry or vegetables; pre-packaged ready-to-eat prepared foods, namely, açai berry bowls containing processed açai berries.</p> <p><u>Class 30</u>: Frozen, prepared and packaged meals consisting primarily of pasta, grain or rice; frozen pizzas; frozen pasta; noodle-based prepared meals.</p>

<sup>5</sup> Case T- 133/05

desserts; prepared pasta-based meals; fruit sauces.	
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20. In its statement of grounds and two sets of submissions, the opponent argues that the competing parties' goods are either identical or highly similar. In its submissions-in-lieu, the applicant accepts some goods are similar. Both parties have made several arguments in relation to the individual terms. I do not intend to reproduce them here, but I have taken them into consideration.

21. For the purposes of comparing goods, 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.<sup>6</sup> I have therefore assessed the applicant's goods by dividing the terms into groups as per below.

*Frozen [...] meals consisting primarily of meat [...]*

22. I find that the narrower term *frozen [...] meals consisting primarily of meat* is included within the opponent's wider term *prepared meals consisting mainly of meat*. It is my view that the opponent's wider term covers prepared meals which may be frozen (such as the applicant's goods), chilled, or at ambient temperature, such as tinned meals etc. I therefore find that it is identical to the opponent's term under the principle outlined in *Meric*.

*[...] prepared meals consisting primarily of meat [...]; [...] packaged meals consisting primarily of meat [...]*

23. I find that the applicant's term *[...] prepared meals consisting primarily of meat [...]* is identical to the opponent's term *prepared meals consisting mainly of meat* on a literal basis. I also find that *[...] packaged meals consisting primarily of meat [...]* would be interpreted by the average consumer as being the same as a *prepared meal*, as both imply that they are prepared and packaged, and bought in a ready-to-cook state. I

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<sup>6</sup> *Separode Trade Mark* (BL O/399/10) and *BVBA Management, Training en Consultancy v. Benelux-Merkenbureau* [2007] ETMR 35 at paragraphs 30 to 38

therefore find that it is also identical to the opponent's term *prepared meals consisting mainly of meat*.

*Frozen [...] meals consisting primarily of [...] fish [...]*

24. I find that this narrower term is included within the opponent's wider term *prepared meals consisting mainly of fish*. It is my view that the opponent's wider term covers prepared meals which may be frozen (such as the applicant's goods), chilled, or at ambient temperature, such as tinned meals etc. I therefore find that it is identical to the opponent's term under the principle outlined in *Meric*.

*[...] prepared [...] meals consisting primarily of [...] fish [...]; [...] packaged meals consisting primarily of [...] fish [...]*

25. I find that these terms are identical on a literal basis to the opponent's term *prepared meals consisting mainly of fish*. I have included *packaged meals consisting primarily of [...] fish [...]* as it is my view that *prepared meals* and *packaged meals* are identical.

*Frozen, prepared and packaged meals consisting primarily of [...] poultry [...]*

26. It is my understanding that *poultry* differs from *meat* in that the former includes the flesh of birds whereas *meat* is used in relation to the flesh of other animals such as beef, pork, or lamb. These goods are similar to the opponent's term *prepared meals consisting mainly of meat*. They will have the same users and the same use, which is satiate the user's hunger. Their nature will overlap as they are pre-prepared and packed meals, but they will differ slightly as one primarily contains meat whereas the other primarily contains poultry. They will be sold through the same trade channels and appear in the same areas within those retail environments. The opponent's wider term *prepared meals consisting mainly of meat* includes those sold as frozen, chilled, or as ambient goods. The applicant's *frozen [...] meals consisting primarily of [...] poultry [...]* specify that they are sold as frozen and therefore will be sold in the same place as the frozen variety of the opponent's *prepared meals consisting mainly of meat*. The non-frozen versions of the applicant's *[...] prepared [...] meals consisting primarily of [...] poultry [...]* and *[...] packaged meals consisting primarily of [...] poultry [...]* will be sold in the same areas as the non-frozen variety of the opponent's *prepared*

*meals consisting mainly of meat* are sold, such as the chilled section or as ambient goods. They are not complementary as one is not essential to the other, but they are likely to be in competition with each other as users may choose between products either made primarily of meat or poultry. Taking these factors into account, I find that the goods are highly similar to each other.

*Frozen [...] meals consisting primarily of [...] vegetables*

27. I find that this term is identical to the opponent's term *ready-to-eat deep-frozen meals consisting mainly of vegetables*, as I do not consider there to be a difference between *frozen* and *deep frozen*.

*[...] prepared [...] meals consisting primarily of [...] vegetables; [...] packaged meals consisting primarily of [...] vegetables*

28. I find that these wider terms relating to prepared and packaged vegetable-based meals include the opponent's narrower term *ready-to-eat deep-frozen meals consisting mainly of vegetables*. This is because the applicant's term implies that, as a "meal", it is also sold in a prepared state (albeit it frozen), whereas the opponent's term covers prepared meals which may be frozen, chilled, or at ambient temperature, such as tinned meals etc. I therefore find that it is identical to the opponent's term under the principle outlined in *Meric*.

*Pre-packaged ready-to-eat prepared foods, namely, açai berry bowls containing processed açai berries.*

29. In my experience, açai berry bowls primarily consist of açai, but also often contain other fruit purées such as banana or apple etc. to add extra sweetness. It is my view that they are similar to the applicant's term *prepared fruit*. The use and users will be the same, as they will be the general public who wish to consume fruit. The nature will overlap as both will contain fruit that has been prepared, although the ready-to-eat variety of *açai berry bowls* may also contain other ingredients such as toppings like nuts, seeds, or granola. Their trade channels overlap and are likely to be found near each other within retail outlets. There may be a degree of complementarity, as *prepared fruit* may be essential within the making of *açai berry bowls* as their primary ingredient, and users are likely to believe that the responsibility for producing both

types of fruit-based goods lies within the same undertaking. They may also be in competition as users may choose between which type of prepared fruit-based goods to consume. Taking all of these factors into account, I find that the goods are highly similar to each other.

*Frozen [...] meals consisting primarily of pasta*

30. I find that this narrower term relating to pasta-based meals which are sold frozen is included within the opponent's wider term *prepared pasta-based meals*. It is my view that the opponent's wider term covers prepared pasta-based meals which may be frozen (such as the applicant's goods), chilled, or at ambient temperature, such as tinned meals etc. I therefore find that it is identical to the opponent's term under the principle outlined in *Meric*.

*[...] prepared [...] meals consisting primarily of pasta; [...] packaged meals consisting primarily of pasta*

31. Although worded slightly differently, I find that these terms are identical to the opponent's term *prepared pasta-based meals*. I have included *packaged meals consisting primarily of pasta* as it is my view that *prepared meals* and *packaged meals* are identical.

*Frozen, prepared and packaged meals consisting primarily of [...] grain or rice*

32. These goods are similar to the opponent's term *prepared pasta-based meals*. They will have the same users, who are members of the public seeking a carbohydrate-rich prepared/package meal. They are both used to satiate hunger. Their nature overlaps as they are both prepared meals, but they differ as one is primarily made from pasta, and the other from rice or other types of grains. They will be sold through the same trade channels and appear in the same areas within those retail environments. This is because the opponent's wide term *prepared pasta-based meals* includes those sold as frozen, chilled, or as ambient goods. The applicant's *frozen [...] meals consisting primarily of [...] grain [...]* and *frozen [...] meals consisting primarily of [...] rice* specify that they are sold as frozen, and therefore will be sold in the same place as the frozen variety of *prepared pasta-based meals*. The applicant's *[...] prepared [...] meals consisting primarily of [...] grain or rice* and *[...] packaged meals consisting primarily*

of [...] *grain or rice* will be sold in the same areas as the non-frozen variety of the opponent's *prepared pasta-based meals* are sold, such as the chilled section or as ambient goods. They are not complementary as one is not essential for the other, but they will be in competition as users will choose which carbohydrate-rich meal to consume. Taking these factors into account, I find that there is a medium to high degree of similarity between the goods.

#### *Noodle-based prepared meals*

33. It is my view that this term is similar to the opponent's term *prepared pasta-based meals*. They will have the same users, who are members of the public looking for a carbohydrate-rich pre-prepared meal. They are both used to satiate hunger. Their nature overlaps as they are both prepared meals, but they differ as one is primarily made from pasta, and the other from noodles (being a wheat-based ingredient in Asian cuisine). They will be sold through the same trade channels and are likely to appear in similar areas within those retail environments. They are not complimentary as one is not essential for the other, but they will be in competition as users will choose which carbohydrate-rich meal to consume. Taking these factors into account, I find that there is a medium to high degree of similarity between the goods.

#### *Frozen pasta*

34. This term is identical to the opponent's term *frozen pasta* on a literal basis.

#### *Frozen pizzas*

35. This term has some similarity with the opponent's term *prepared pasta-based meals*. They will have the same users, who are members of the public seeking Italian prepared/packaged food that can be cooked and consumed with minimal preparation. They are both used to satiate hunger. Their nature broadly overlaps as they are both prepared foods, but they differ as one is primarily made from pasta, and the other is a pizza. They will be sold through the same trade channels. Whilst I recognise that *frozen pizza* stipulates that it is specifically sold as frozen (whereas the opponent's wider term *prepared pasta-based meals* does not specify whether they are sold frozen, chilled, or as ambient goods), it is considered that the opponent's wider term includes the frozen varieties of pasta-based meals (as well as those sold as chilled or as

ambient products). On this basis, the frozen variety of *prepared pasta-based meals* covers will be sold in the same area within those retail environments as *frozen pizza*. They are not complementary as one is not essential for the other, but there is a degree of competition as users may choose which Italian food to consume. Taking these factors into account, I find that there is a low to medium degree of similarity between the goods

### **Average consumer and the purchasing act**

36. 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 in question: *Lloyd Schuhfabrik Meyer*<sup>7</sup>.

37. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*<sup>8</sup>, Birss J (as he then was) described the average consumer in these terms:

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

38. In its submissions filed within the evidence rounds, the opponent argues that the average consumer will pay a low to medium degree of attention when choosing the goods on the basis that the “costs of these goods is... relatively low” and because they are common foodstuffs. In its submissions in lieu, the applicant argues that the “pay a higher degree of attention when buying goods that impact upon their health such as those to which the application relates”.

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<sup>7</sup> Case C-342/97

<sup>8</sup> [2014] EWHC 439 (Ch)

39. The average consumer for the goods will be the public at large. The cost of purchase is likely to vary, but overall, the price will be relatively inexpensive. They will be purchased on a frequent basis. Several factors may influence the average consumer when purchasing the goods, such as, inter alia, the type of ingredients used, the allergen information, and the dietary and nutritional information. However, the selection process is likely to be more casual than careful. Taking into account all of these factors, it is my view that the average consumer will pay a low to medium degree of attention. The goods will be bought in retail outlets such as supermarkets, specialist food stores, or their online equivalents. The customer will self-select the goods from display shelves, refrigerators or freezers, or by selecting the image of their desired product if purchasing online. Therefore the visual component will dominate the selection process. However, I do not discount the role that aural selection may play when purchasing, such as through word-of-mouth recommendations or when discussing the goods with staff.

### **Comparison of marks**

40. It is clear from *Sabel BV v Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in *Bimbo SA v OHIM*<sup>9</sup>, 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

41. It would be wrong, therefore, to dissect the trade marks artificially, although it is necessary to take into account the distinctive and dominant components of the marks

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<sup>9</sup> Case C-591/12P

and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

42. The respective trade marks are shown below:

<b>The opponent's mark</b>	<b>The applicant's mark</b>
CROP'S	PEOPLE WHO GIVE A CROP

43. In its submissions filed during the evidence rounds, the opponent argues that the word "CROP" is the "key word that differs from everyday words", whereas the words "PEOPLE WHO GIVE A" are "every day and generic words" and contribute less to the distinctiveness of the applicant's mark as these words "play only a supporting role". It therefore argues that the word "CROP" is the distinctive and dominant element within the applicant's mark. In its submissions filed during the evidence rounds, the applicant argues that "whilst the presence of CROP cannot be ignored, it should be found that the additional four words play the greater role in the overall impression" of the applicant's mark.

44. The opponent's mark is a plain word mark written in uppercase. As a word-only mark with no other elements, the overall impression lies in the word "CROP'S".

45. The applicant's mark is a plain word mark written in uppercase. As a word-only mark with no other elements, the overall impression lies in the whole phrase "PEOPLE WHO GIVE A CROP". I am of the view that the words combine to form a complete unit, I therefore disagree with the opponent that the term "CROP" is more dominant within the applicant's mark. Instead, I find that overall impression of the mark lies in the combination of the words.

#### Visual comparison

46. In its submissions filed within the evidence rounds, the opponent argues that the competing marks are visually similar due to the inclusion of the word "CROP" within the marks. In its submissions filed in the evidence rounds, the applicant argues that the competing marks are visually dissimilar on the basis that the applicant's mark

contains the additional words “PEOPLE WHO GIVE A” and also that the opponent’s mark contains an apostrophe and an S.

47. The competing marks are visually similar as they both contain the word “CROP”. The competing marks visually differ as the opponent’s mark contains an apostrophe and an S. The applicant’s mark contains four additional words preceding the word “CROP”, namely “PEOPLE WHO GIVE A”. The beginnings of words or phrases tend to have more visual and aural impact than the ends<sup>10</sup>, which, in my view, results in the visual difference created by the additional words “PEOPLE WHO GIVE A” within the applicant’s mark being more significant. The opponent’s mark is also relatively short, whereas the applicant’s is much longer. Bearing in mind my analysis of the marks’ overall impressions, I am of the view that the competing marks are visually similar to a low degree.

#### Aural comparison

48. In its statement of grounds, the opponent argues that there is a high degree of aural similarity between the competing marks on the basis that they “share the highly identical verbal elements ‘CROP’”. In its submissions filed within the evidence rounds, the applicant argues that the marks are aurally dissimilar due to the additional words within the applicant’s mark that are not present in the opponent’s mark, and the addition of the apostrophe and S in the opponent’s mark.

49. The competing marks are aurally similar as they both contain the word “CROP”. The competing marks differ aurally as the opponent’s mark contains an S. The applicant’s mark also contains four additional words preceding the word “CROP”, namely “PEOPLE WHO GIVE A”. As explained above, the beginnings of words or phrases tend to have more visual and aural impact than the ends<sup>11</sup>, which, in my view, results in the aural difference created by the additional words “PEOPLE WHO GIVE A” within the applicant’s mark being more significant. The opponent’s mark is also only one syllable whereas the applicant’s mark is longer, with six syllables. Bearing in mind my analysis of the marks’ overall impressions, I am of the view that the competing marks are aurally similar to a low degree.

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<sup>10</sup> See paragraph 81 of *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

<sup>11</sup> See paragraph 81 of *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

## Conceptual comparison

50. In its statement of grounds, the opponent submits that the competing marks are “very similar” conceptually on the basis that they share the identical word “CROP”. In its submissions filed within the evidence rounds, the applicant argues that the marks are conceptually dissimilar on the basis of the applicant’s mark being a play-on-words using the colloquial phrase “who gives a crap” using the word “crop”. It argues that this is “an entirely different concept” to the opponent’s mark, which it states is a reference to a person. In its submissions filed within the evidence rounds, the opponent argues that the interpretation of “CROP’S” as a reference to a person called CROP “is not the only possible interpretation”. It submits that the term could also be interpreted as “something belonging to crops, such as ‘CROP’S yield’ or ‘CROP’S quality’”.

51. The word “CROP” is defined by The Cambridge Dictionary as a noun meaning “(the total amount collected of) a plant such as a grain, fruit, or vegetable grown in large amounts”. It is my view that the opponent’s mark “CROP’S” would be understood as the possessive form of the dictionary-defined word CROP, e.g. something originating from a crop. The applicant’s mark “WHO GIVES A CROP” also contains the word “crop”, which will also be understood as per its dictionary definition. I am of the view that the average consumer would understand the phrase “WHO GIVES A CROP” as a playful reference to the phrase “who gives a crap” (meaning “who cares?”) but with “crap” replaced with “crop”. On this basis, it is therefore my view that the applicant’s mark as a phrase using a play-on-words is conceptually dissimilar to the opponent’s mark when taken in totality, but there is a small conceptual overlap due to the shared use of the word “CROP”. However, given that the overlapping element “CROP” is strongly allusive of the class 29 and 30 goods, it is my view that it is not a distinctive overlap.

### **Distinctive character of the earlier trade mark**

52. 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 C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

53. Registered trade marks possess various degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods, to those with high inherent distinctive character, such as invented words which have no allusive qualities.

54. The distinctiveness of a mark can be enhanced by virtue of the use made of it. Although the opponent has filed evidence of use, I do not consider this evidence to be sufficient for the purposes of demonstrating that the opponent’s mark had an enhanced degree of distinctive character at the relevant date of 14 May 2024. Whilst Exhibit PCWT7 shows a selection of sales invoices, seemingly showing goods being sold in quite large quantities, the evidence does not show the total sales figures or what share of the relevant market was held by goods sold under the opponent’s mark. On the face of it, the sales figures shown in the evidence are likely to only represent a very small proportion of the relevant UK market, which I understand to be very large. I note that the opponent attempted to provide a spreadsheet of sales in a ‘continuation sheet’ to its statement of use during the evidence rounds. Although the figures are difficult to discern, the figures do not look as if they are significant in relation to what I understand the UK market to be. Exhibit PCWT2 shows that the opponent has won a UK award

for its goods. Exhibit PCWT5 shows a trade stand design and PCWT6 contains three invoices for exhibition stands, which demonstrate that the opponent has paid to attend trade fairs to promote its goods. In the witness statement, Mr Tally and Mr Coppens refer to The Casual Dining fair as a “key event in the opponent’s sector” and that attending trade fairs demonstrates the opponent’s “efforts to establish a commercial position”. However, there is no further information about the trade events or how widely they are attended. Furthermore, whilst Exhibit PCWT3 shows the opponent’s sponsorship of a sporting event and Exhibit PCWT4 shows a publication owned by the opponent, there is no other information about how widely this is distributed amongst consumers within the UK. Exhibit PCWT8 shows screenshots of the WayBack Machine records of opponent’s website, <https://www.crops-uk.com/>. These demonstrate that the website has been active since 2018, and in the witness statement, Mr Tally and Mr Coppens state that this demonstrates that the opponent “was intensively revamping its website to put itself on the map commercially”. However, the evidence does not show how frequently the website has been accessed or the audience reached, or what the website actually looked like at any time. Exhibits PCWT9-11 show screenshots of posts made on the opponent’s social media accounts. However, these do not demonstrate that the posts reached a significant number of accounts, or what percentage of accounts reached were based in the UK. It is therefore my view that the evidence is not sufficient to demonstrate the extent to which the average consumer of the goods within the UK has been exposed to the opponent’s marks. Taking all of these factors into account, it is my view that the evidence submitted does not support the establishment of enhanced distinctiveness. I therefore only have the inherent position to consider.

55. In its submissions filed during the evidence rounds, the opponent submits that the distinctiveness of its mark is “normal”. In its submissions in lieu, the applicant argues that the earlier mark is “of low distinctiveness with any distinctiveness conferred only by the inclusion of the apostrophe”.

56. As stated previously, it is my view that the average consumer will understand the mark “CROP’S” as the possessive form of the dictionary-defined word “CROP”. As a word which is strongly allusive of the class 29 and 30 goods, I find that the opponent’s mark is inherently distinctive to a low degree.

## **Global assessment – conclusions on likelihood of confusion**

57. 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 down to the responsible undertakings being the same or related. There is no set formula for establishing a likelihood of confusion between marks; it is a global assessment where a number of factors need to be borne in mind.

58. One such factor is the interdependency principle, i.e. a lesser degree of similarity between the competing marks may be offset by a greater degree of similarity between the respective goods, and vice versa. As mentioned above, it is necessary for me to keep in mind the distinctive character of the opponent's mark, the average consumer for the goods and the nature of the purchasing process. In doing so, I must be mindful that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

59. In its submissions in lieu, the opponent argues that the visual and aural similarity along with the identical nature of the goods and the distinctiveness of the earlier trade mark results in a likelihood of confusion between the competing marks. In its submissions in lieu, the applicant argues that the competing marks are "fundamentally dissimilar", and when assessed globally, the differences "outweigh any slight similarity from the common, low-distinctiveness element 'CROP'". On this basis, it argues that there is no likelihood of confusion between the competing marks.

60. Earlier in this decision I found that the applicant's goods range from being similar to a low to medium degree to being identical to the opponent's goods. The average consumer of goods will be the general public. The average consumer is likely to pay a low to medium amount of attention when purchasing the goods. I have found the marks to be visually similar to a low degree, aurally similar to a low degree, and conceptually dissimilar. The earlier mark has a low level of inherent distinctive character.

61. The overall impression of the opponent's mark lies exclusively in the word "CROP'S", whereas the overall impression lies in the whole phrase "PEOPLE WHO

GIVE A CROP” in the applicant’s mark. The additional words within the applicant’s mark constitute significant differences between the marks in respect of their visual, aural, and conceptual identities, and it is unlikely that the average consumer would overlook the differences. It is my view that these differences are likely to be sufficient to prevent the average consumer from mistaking one mark for the other. I therefore find that there is no likelihood of direct confusion, even in respect of identical goods.

62. This leaves indirect confusion to be considered. In *L.A. Sugar Limited v By Back Beat Inc*<sup>12</sup>, Mr Iain Purvis Q.C., as the Appointed Person, explained that:

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

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

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

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<sup>12</sup> BL O/375/10

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

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

63. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors*<sup>13</sup>, Arnold LJ approved Mr Purvis's formulation but added:

"13. As James Mellor QC sitting as the Appointed Person pointed out in *Cheeky Italian Ltd v Sutaria* (O/219/16) at [16] 'a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion'. Mr Mellor went on to say that, if there is no likelihood of direct confusion, 'one needs a reasonably special set of circumstances for a finding of a likelihood of indirect confusion'. I would prefer to say that there must be a proper basis for concluding that there is a likelihood of indirect confusion given that there is no likelihood of direct confusion."

64. It is not sufficient that a mark merely calls to mind another mark (as per *Duebros Limited v Heirler Cenovis GmbH*<sup>14</sup>). This is mere association not indirect confusion. A finding of indirect confusion should not be made merely due to a shared element within marks.

65. As stated previously, it is my view that the opponent's mark "CROP'S" will be understood by the average consumer as a reference to the possessive form of the allusive dictionary-defined word "CROP", whereas the applicant's mark "WHO GIVES A CROP" will be understood by the relevant public as being a playful reference to the well-known phrase "who gives a crap?" but with the final word substituted with the allusive word "CROP".

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<sup>13</sup> [2021] EWCA Civ 1207

<sup>14</sup> BL O/547/17

66. It is therefore my view that the average consumer, paying a medium level of attention, would notice the differences between the marks but would not assume an economic link between the two undertakings. This is on the basis that the shared word “CROP” is not so strikingly distinctive that the average consumer would assume that only the opponent was using it. Furthermore, the visual, aural, and conceptual differences between the marks are not consistent with a brand extension or sub-brand of a house mark, so the average consumer is unlikely to interpret it in this manner. For instance, I see no reason why an undertaking would take the word “CROP’S” as the possessive form of the allusive dictionary-defined word “CROP”, and change it into a playful reference to a well-known phrase, resulting in a different mark with a completely different conceptual meaning. Whilst I acknowledge that the categories in *L.A. Sugar* are not exhaustive, I can see no other basis for concluding that the average consumer would perceive the marks to be from the same, or economically linked, undertakings. Rather, it is my view that consumers would perceive the similarities between the marks as purely coincidental; in my view, they would be attributed to different undertakings where one refers to the possessive form of the allusive word “CROP” and one refers to a playful reworking of a well-known phrase using the same allusive word. I therefore find that there is no likelihood of indirect confusion between the competing marks, even in relation to identical goods.

### **Final remarks**

67. The opposition under section 5(2)(b) has failed its entirety. Subject to any successful appeal, the application will continue to registration.

68. As I have found that there is no likelihood of confusion between the competing marks, I do not consider it necessary to assess whether or not the UK mark has been used, as it is irrelevant to the outcome. Furthermore, it is my view that the IR, which contains additional elements to the shared word “CROP”, does not improve the opponent’s position. I therefore do not consider it necessary to assess whether there is a likelihood of confusion between the applicant’s mark and the IR.

### **Costs**

69. 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. In the

circumstances I award the applicant the sum of £900 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Considering the opponent's statement and preparing a counterstatement: £250

Considering and commenting on the other side's evidence £250

Preparing submissions-in-lieu: £400

70. I note that the applicant considered and responded to the opponent's evidence within its submissions. However, the applicant did not file any evidence of its own, and as such, I have awarded a below-scale figure for this activity.

71. I therefore order CROP'S N.V. to pay PLANTED VENTURES, LLC the sum of £900. 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 27<sup>th</sup> day of November 2025**

**K SERRAVALLE**  
**For the Registrar**