

O/1119/25

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. 3782665

BY

NAMASTE DELHI LTD

TO REGISTER THE FOLLOWING TRADE MARK



IN CLASS 43

AND OPPOSITION THERETO UNDER NUMBER 437763

BY

MR RASHPAL SINGH

Background and Pleadings

1. On 28 April 2022, Namaste Delhi Ltd (“the Applicant”) applied to register in the UK the trade mark as depicted on the front cover page of this decision (“the contested mark”) in respect of the following services:

Class 43: Restaurants; Restaurant services; Grill restaurants; Delicatessens [restaurants]; Mobile restaurant services; Hotel restaurant services; Restaurants (Self-service -); Bar and restaurant services; Restaurant and bar services; Take-away restaurant services; Provision of food and drink in restaurants; Serving food and drink for guests in restaurants; Serving food and drink in restaurants and bars; Providing food and drink for guests in restaurants; Providing food and drink in restaurants and bars; Tourist restaurants; Providing restaurant services; Self-service restaurants; take-away restaurant services; Take-out restaurant services; Self-service restaurant services; Fast-food restaurant services; Salad bars [restaurant services]; Providing information about restaurant services; Restaurant services provided by hotels; Restaurant services incorporating licensed bar facilities; Restaurant services for the provision of fast food.

2. On 29 November 2022, Mr Rashpal Singh (“the Opponent”) opposed the application under sections 5(2)(b) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”) against all the aforesaid services for which the registration is sought.

3. Under section 5(2)(b) the Opponent relies upon the two UK trade mark registrations (“collectively the earlier marks”) as set out below:

(i) UK TM no. 3601333

(“the first earlier mark”)

NAMASTE

Filed on 26 February 2021 and registered on 26 November 2021 relying on all the services of his registration namely:

Class 39: Food delivery services; Delivery of food and drink prepared for consumption.

Class 43: Restaurants; Restaurant services; Restaurant information services; Self-service restaurants; Fast food restaurants; Take-out restaurant services; Restaurant and bar services; Providing reviews of restaurants and bars; Provision of food and drink in restaurants; Making reservations and bookings for restaurants and meals; Cafés; Cafeterias; Catering; Outside catering services; Business catering services; Food and drink catering; Consultancy services in the field of food and drink catering; Take-away fast food services; Preparation of food and drink; Provision of food and drink; Advice concerning cooking recipes.

(ii) UKTM no. 3313346¹

DELHI DARBAR

("the second earlier mark")

Filed on 25 May 2018 and registered on 28 September 2018 for services in classes 39 and 43 namely:

Class 39: Food delivery services; Delivery of food by restaurants.

Class 43: Indian restaurant services; Bar and restaurant services; Provision of food and drink in restaurants; Restaurant services; Restaurant services incorporating licensed bar facilities; Restaurants; Catering services; Takeaway food services; Takeaway services.

4. Both the Opponent's marks qualify as earlier trade marks under section 6(1) of the Act by virtue of their earlier filing dates. As they both completed their registration process less than five years before the date on which the application for the contested mark was made, the Opponent does not need to prove that he has made genuine use of the marks and so may rely on all the services as listed.

5. The Opponent claims that under section 5(2)(b) his trade mark "registrations (taken together) cover marks which contain the distinctive elements of the Applicant's mark" and that the services are the same or highly similar to those of the application.

¹ The trade mark registration includes a disclaimer disclaiming any right to the exclusive use of the word 'Delhi'.

Consequently, there exists a likelihood of confusion which includes a likelihood of association between the respective marks.

6. Under section 5(4)(a) the Opponent claims that he has used the sign 'namaste by DELHI DARBAR' in Glasgow, Scotland since 1990 for the *provision of food and drink via restaurants* services and that use by the Applicant for a highly similar name in the same field is likely to constitute a misrepresentation to consumers that the third party is or operates under some economic connection with, under licence from or with the endorsement of the Opponent. Through this misrepresentation the Opponent will likely suffer loss and damage through inter alia diversion of trade, free riding upon the investment made by the Opponent in generating goodwill and reputation concerning their business and dilution of the perception afforded to their business in the marketplace. Consequently, use of the contested mark would be contrary to the law of passing off.

7. The Applicant filed a defence and counterstatement denying the claims made. In relation to the section 5(2)(b) claim the Applicant submits that the respective marks are aurally, visually and conceptually dissimilar and that the services are dissimilar. Under section 5(4)(a) the Applicant denies that the Opponent owns goodwill in his sign and denies that consumers would be deceived as to the origin of the services being provided, given that the marks are dissimilar. Further the Applicant denies misrepresentation or that damage would be caused by any of the heads of damage claimed from diversion of trade, free riding or dilution. It is said that the Applicant has accrued its own independent goodwill and reputation in its trade mark and therefore there will be no economic connection made between the parties.

Representation

8. The Opponent is represented by Harper Macleod LLP whilst the Applicant represents itself. Both parties filed evidence during the evidence rounds. A hearing was requested, that hearing taking place before me via video link on 13 August 2024. Mr Rajesh Kumar appeared for the Applicant and Mr Jamie Watt, from Harper Macleod LLP attended for the Opponent. Both parties filed skeleton arguments in advance of the hearing.

Relevance of EU Law

9. 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 Page 6 of 44 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

The Opponent's Evidence

10. The Opponent's evidence in chief consists of the witness statement of Mr Jamie Watt dated 10 August 2023 together with 7 exhibits marked JW1-JW7. Mr Watt is a partner at Harper McLeod LLP, the Opponent's representatives. His evidence comes from his own research and knowledge of the Opponent's business, having acted for them on various legal matters since 2018. His evidence goes to the claimed goodwill of the business conducted under the sign 'namaste by Delhi Darbar'. Mr Watt states that 'namaste by Delhi Darbar' is a food and drink outlet operated by MSA Restaurants Limited ("MSA"). The Opponent is the director and owner of MSA. Details taken from Companies House's website to show the registration of the company is produced.²

11. Details of other restaurants (at addresses in Dumbarton and Bishopbriggs) trading under the name Delhi Darbar are produced said to be operated by family members of the Mr Singh. Two undated Google screenshots are produced to evidence the existence of these premises, but no further information is provided.³

12. Mr Watt states that the Opponent licenses MSA and the operators of the other aforementioned premises, to use the marks/sign in relation to the operation of those outlets. No details of the license agreement or its terms are produced.

13. Mr Watt states:

"11. In instances of food and drink premise operation, particularly in the franchising sector, all uses of marks relevant to the operation of the individual

² Exhibit JW1

³ Exhibit JW2.

premises, despite minor differences in actual ownership, in essence all contribute to and form part of the single origin designated by the registered trade mark rights, or the single point of origin protected under the law relating to passing off, as ultimately all users require the consent of (or may be prevented from using the relevant marks by) the ultimate owner of the registered trade mark rights. All operators are, therefore, entitled to the benefit of the goodwill generated by individual “group” members.”

No evidence is produced, however, regarding the normal practices within the foods and drinks industry to support such a claim.

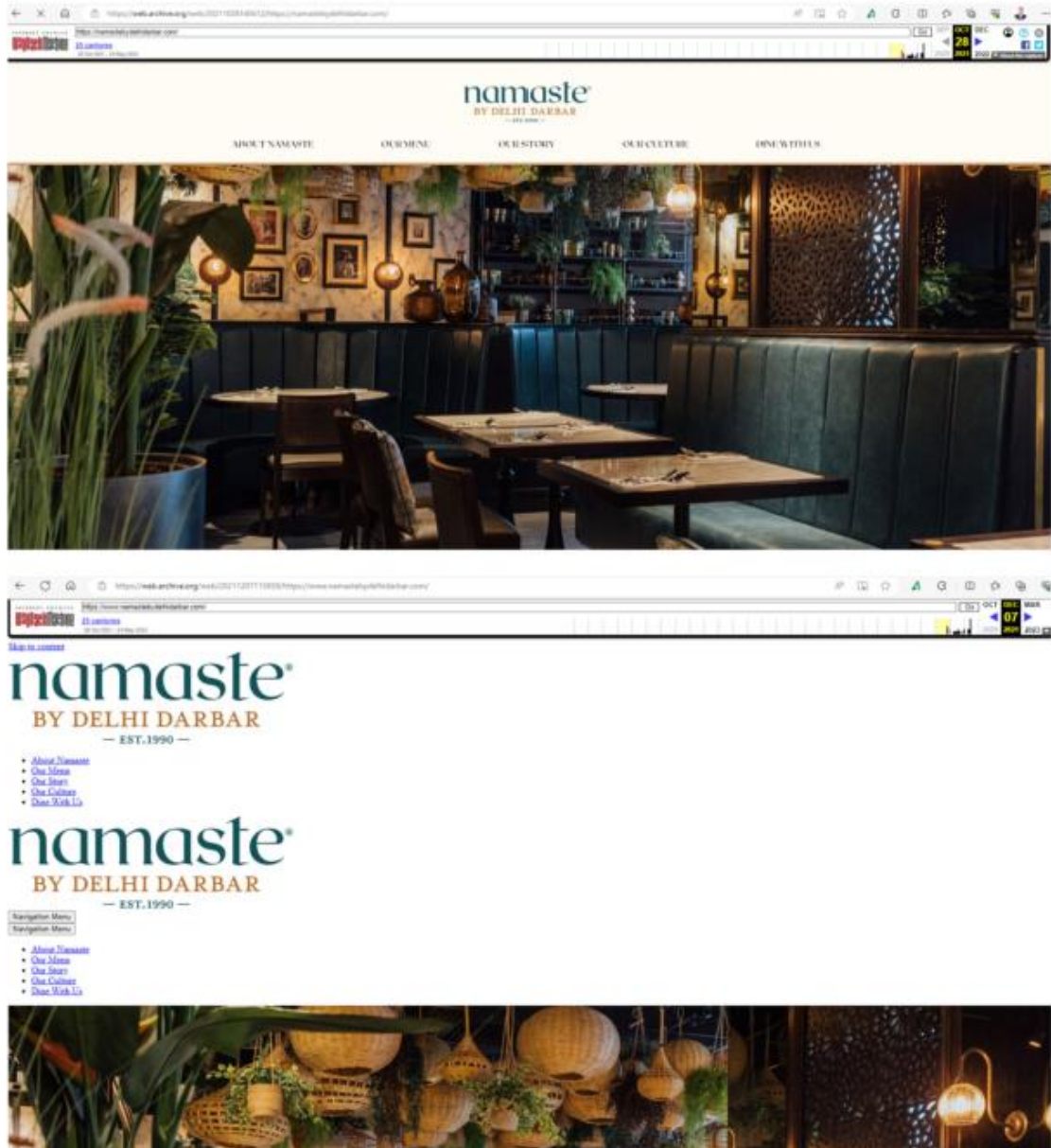
14. Mr Watt states that all uses of the earlier marks are controlled by the Opponent as the proprietor of the earlier mark. The unregistered sign is a combination of the two earlier marks and used under licence by MSA. He states that irrespective of any use by MSA, the unregistered sign remains indicative of goods and services emanating from a single source. It is said that use of the marks in relation to the premises at Dumbarton and Bishopbriggs perform the same function and have the same effect.

15. Mr Watt states that the goodwill generated by MSA and other users with the Opponent’s permission accrues to the Opponent and that the Opponent guarantees certain liabilities of MSA arising from the operation of the business. Again, no corroborative evidence is produced to support these claims.

16. Mr Watt states that the goodwill which subsists in the business ‘namaste by Delhi Darbar’ is substantial. In support Mr Watt produces the following:

- Two screenshots of the home page (an example of which is reproduced below) taken from www.namastebydelhidarbar.com produced using the website archive tool the Wayback Machine relating to ‘namaste by Delhi Darbar’.⁴ These are dated 28 October 2021 and 7 December 2021.

⁴ Exhibit JW3



- Copies of third party reviews for 'namaste by Delhi Darbar' taken from Trip Advisor dated 31/10/21, 11/12/21, 1/1/22 and 13/2/22.⁵ I note that the total number of reviews is said to be 73, but I have no indication over what period these were left on Trip Advisor given that the screenshot is undated. Further reviews are produced for the Delhi Darbar premises at Dumbarton and Bishopbriggs but these are from an unknown source and are undated only referenced by being posted at various 'weeks/ months and years ago'.

⁵ Exhibit JW4

- Press articles consisting of reviews of ‘namaste by Delhi Darbar’ and the Bishopbriggs premises.⁶ These consist of:

(i) an excerpt taken from the ‘Glasgow Foodie Glasgow Food Blog’ dated 18 December 2021. Reference is made to “this new venture by Delhi Darbar located in the St Enoch Centre” and “the Delhi Darbar premises having been in the North of Glasgow for over 30 years”. Details are provided as to the menus and the various dishes offered.

(ii) An extract of a blog (of unknown source) authored by Kris Munro dated 23 October 2021 reviewing the food. The blog refers to the “guys at Namaste by Delhi Darbar” opening a new restaurant in the St Enoch Centre.

(iii) A Reach Advertisement for the ‘Delhi Darbar restaurant’ from an unknown source dated 21 March 2017 included in an article headed “*Glasgow’s best kept curry secrets the hidden gem Indian restaurants you have to try*”.

No information is provided as to the circulation of these articles or the level of the public’s engagement with the blogs.

- Two undated screenshots taken from the Facebook and Instagram accounts of ‘Namaste by Delhi Darbar’ said to show a significant number of followers.⁷ One screenshot from the Facebook account’s landing page shows that the account has ‘42 thousand followers’ and ‘37 thousand likes’ and the Instagram account has 74.6k followers and has made 335 posts. Given that the screenshots are undated it is not clear over what period these followers were collected. However, given that the restaurant only opened in or about October/December 2021 it is reasonable for me to assume that they were after these dates.
- Details of “The Great Taste Award” accolade said to have been won by the Opponent’s business in 2023.⁸ The accolade was given for ‘Glasgow’s award winning Grandad masala chai’ which appears to be a beverage of

⁶ Exhibit JW5.

⁷ Exhibit JW6.

⁸ Exhibit JW7.

some sort. The extract is undated and taken from the Instagram account 'namstebydelhidarbar'.

The Applicant's Evidence

17. The Applicant's evidence consists of the witness statement of Rajesh Kumar dated 10 October 2023 together with 9 exhibits.

18. Mr Kumar is the Managing Director of the Applicant. He states that the name "NAMASTE DELHI" originates from the Indian greeting "NAMASTE" with joined hands together in prayer and "DELHI" the bustling capital of India. He provides details as to the nature of the Applicant's style of restaurant located in Aberdeen, said to have been running since July 2018. Mr Kumar's evidence is a combination of submissions in response to the grounds and evidence of fact said to demonstrate the substantial goodwill that the Applicant has generated in the sign NAMASTE DELHI in relation to the provision of restaurant services and related goods/services. In support of this claim Mr Kumar produces:

- a screenshot taken from NAMASTE DELHI's website www.namastedelhi.co.uk showing the range of services on offer.⁹ I note that the screenshot is undated.
- An undated screenshot of a LinkedIn post. I note that the extract shows that the Applicant had 780 followers as at April and May 2023.¹⁰
- Details from Company House's website showing the date of incorporation of the Applicant in June 2018 and details of its officers.¹¹
- A screenshot taken from the 'Whois' register showing that the domain name namastedelhi.co.uk was registered in June 2018 and that the Opponent's namastebydelhidarabar.com domain name was not registered until March 2021.¹²
- A comparative table showing the purported online reputations of the respective parties. The details contained within the table are undated, but they show a comparison between the number of reviews each party has received on various platforms. For example, the Applicant's restaurant is shown to have received 334 reviews on Trip Adviser whilst the Opponent has received 84; and the

⁹ Exhibit 1.

¹⁰ Exhibit 1.

¹¹ Exhibit 2.

¹² Exhibit 3.

Opponent's Namaste by Delhi Darbar restaurant received 422 Google reviews whilst the Applicant's restaurant received 250 reviews. Given that these are undated I am unable to pinpoint the period to which they relate and therefore they are not helpful to my assessment.¹³

- A selection of press articles and third party posts the earliest of which are not dated before 2020:¹⁴
- A selection of posts from the respective parties' Facebook accounts said to show details of the openings of each restaurant being 2018 for the Applicant and 2021 for the Opponent.¹⁵
- Extracts showing lists of examples of Indian restaurants in the UK which use the words NAMASTE, DELHI, DARBAR, DURBAR and DELHI either solus or in combination. Included are three undated screenshots taken from the websites of restaurants named DEHLI DARBAR; a list of 27 restaurants/companies using NAMASTE in their name the earliest having shown to have been incorporated since 2015 in Norwich; and a list of 7 restaurants/companies using the word DARBAR the earliest of which was incorporated since 2007.¹⁶
- Undated extracts of screenshots of reviews taken from TripAdvisor, Google, ResDiary/DishCult, LinkedIn, Facebook and Instagram. Whilst most are dated from 2021 to 2023, a small number are dated 2018.¹⁷
- Details of two awards that the Namaste Delhi restaurant has received. The first from the 'Restaurant & Bar awards' is undated. The second from the 'Scottish Enterprise Awards' for the 'Best Indian restaurant in Aberdeenshire' is dated 2021.¹⁸
- Details of research carried out by Mr Kumar taken from the inBeat platform in relation to 'Instagram Fake Follower Checker' regarding the Opponent's Instagram followers said to show that 91% of them are inactive. It is suggested that it is highly unlikely for the Opponent to have gained the number of followers claimed since 2021 as set out in Mr Watt's statement and puts it to proof of its

¹³ Exhibit 3 page 32

¹⁴ Exhibit 4.

¹⁵ Exhibit 5.

¹⁶ Exhibit 6.

¹⁷ Exhibit 7.

¹⁸ Exhibit 8.

claim.¹⁹ The account is only said to have 6.96k real followers with 66.7k being inactive, an engagement rate of 0.81% and 597 average likes.

The Opponent's Evidence in Reply

19. Mr Jamie Watt's evidence in reply is dated 11 December 2023 and consists of two further exhibits marked JW8 and JW9. The exhibits consist of screenshots of Google street view pictures of the Dumbarton (dated April 2009, June 2014, May 2017 and March 2021 June 2023) and Bishopbriggs premises (dated June 2008, October 2010, June 2016 May 2018 and June 2023) said to evidence the continued existence of the restaurants operated by family members of the Opponent. I note that Mr Watt has not responded or included counter evidence regarding the number of Instagram followers the Opponent has gained.

Decision

Section 5(2)(b)

20. Section 5(2) of the Act states as follows:

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

(a)

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.

21. Section 5A of the Act reads as follows:

“5A 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.”

¹⁹ Exhibit 9.

The principles

22. The following principles 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:

- (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 greater degree of similarity between the marks, and vice versa;

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

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

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

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

Comparison of the services

23. When conducting a services comparison, all relevant factors should be considered as per the judgment of the Court of Justice of the European Union (“CJEU”) in *Canon Kabushiki Kaisha v Metro Goldwyn Mayer Inc*, Case C-39/97, where the court stated at paragraph 23 that:

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary.”

24. I am also guided by the relevant factors for assessing similarity identified by Jacob J in *Treat* [1996] R.P.C. 281, namely:

(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.

25. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T-133/05, the General Court (“GC”) stated that:

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

26. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06, the GC stated that “complementary” means:

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

27. The services to be compared are as set out earlier in my decision. I shall go through each of the Applicant's terms in turn grouping terms together where appropriate.²⁰

Restaurants; Restaurant services; Grill restaurants; Delicatessens [restaurants]; Hotel restaurant services; Restaurants (Self-service -); Bar and restaurant services; Restaurant and bar services; Tourist restaurants; Mobile restaurant services; Providing restaurant services; Self-service restaurants; Self-service restaurant services; Fast-food restaurant services; Salad bars [restaurant services]; Restaurant services provided by hotels; Restaurant services incorporating licensed bar facilities; Restaurant services for the provision of fast food.

28. Both earlier marks' respective specifications include the terms *Restaurant* and *Restaurant services*, which are clearly identical either self-evidently or in according to the principles in *Meric* to these applied for terms.

Take-away restaurant services; take-away restaurant services; Take-out restaurant services;

29. There terms are clearly identical either self evidently or in according to the principles in *Meric* to the terms *Take-out restaurant services* and *Takeaway services* in the earlier marks' respective specifications.

Provision of food and drink in restaurants; Serving food and drink for guests in restaurants; Serving food and drink in restaurants and bars; Providing food and drink for guests in restaurants; Providing food and drink in restaurants and bars;

30. The earlier marks each have the term *Provision of food and drink in restaurants* in their respective specifications. The aforementioned applied for terms are clearly either self evidently identical or encompassed within this broader term in according to the principles in *Meric*. In case I am wrong in relation to the *servicing of/providing food and drink in bars* being *Meric* identical I nevertheless consider that the respective services would be highly similar given that both establishments serve the same purpose, the services are of the same nature, directed at the same end user and through the same trade channels. There would also be a degree of competition in that a consumer may

²⁰ *Separode* Trade Mark BL O-399-10 (AP)

choose to select a more formal setting such as a restaurant to have a meal rather than a bar.

Providing information about restaurant services;

31. The first earlier mark includes the term *Restaurant information services*. Whilst the terms are phrased slightly differently they are clearly identical services. If I am wrong then the latter services encompass the applied for services on the principles in *Meric*. The second earlier mark includes the broad term *restaurant services*. A provider offering restaurant services would want to provide consumers with information about the restaurant and the food they serve. Consequently, whilst the nature and the purpose of the respective services differ, they overlap in trade channels, user and provider. Further I consider that the respective services are complementary in so far as a proprietor offering restaurant services would also be responsible for the provision of information about the restaurant and the food that is served which would be important to a restaurant provider and consumers would believe that the same undertaking is responsible for both. Consequently, I consider that the services are similar to a medium degree.

32. Given these findings it not necessary for me to consider any of the Opponent's other terms of its specifications.

Average Consumer and the purchasing process

33. When considering the opposing marks, the average consumer is deemed reasonably informed and reasonably observant and circumspect. For the purposes of assessing the likelihood of confusion the average consumer's level of attention is likely to vary according to the category of services in question.²¹

34. 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, [2014] EWHC 439 (Ch)*, Birss J 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

²¹ *Lloyd Schuhfabrik Meyer*, case c-342/97.

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 word “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

35. Both parties’ specifications can be broadly described as services for the provision of food and drink and restaurant/takeaway services and the provision of information about the same. As such the average consumer is likely to be the general public. In so far as the frequency of the purchase I consider that it will be fairly frequent with the cost whilst varying not being at the higher end of the scale. I consider that factors such as dietary requirements, personal preference, quality, value for money as well as cleanliness and reviews will be taken into account in the selection process. Consequently, I consider that an average (medium) degree of attention will be undertaken.

36. When deciding which services to select, consumers will see the marks in use on signage at the premises themselves or on promotional material such as fliers or printed advertisements. Consumers may also see the use of the marks on social media or websites. Taking these factors into account I consider that the selection/purchasing process will be predominantly visual but not discounting aural considerations by way of word of mouth recommendations or audio advertisements on the radio, for example.

Comparison of the marks

37. 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 Case C-591/12P, *Bimbo SA v OHIM*, that:

“.....it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall

impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

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

39. The respective trade marks are shown below:

Contested mark	Earlier marks
	<p data-bbox="906 786 1161 819">‘First earlier mark’</p> <p data-bbox="906 842 1062 875">NAMASTE</p> <p data-bbox="906 931 1209 965">‘Second earlier mark’</p> <p data-bbox="906 987 1145 1021">DELHI DARBAR</p>

The Opponent’s approach

40. The Opponent in his pleadings purported to argue that the earlier marks should be considered in combination and therefore as a combination of two marks there was a greater degree of similarity between them and the contested mark. This argument is misconceived however and the assessment to be undertaken is in relation to the earlier marks taken separately.

Overall Impression

41. The contested mark consists of the words NAMASTE DELHI presented in capitals in a colourful range of graduated colours. Underneath, in considerably smaller font, are the words CONTEMPORARY INDIAN CUISINE presented in white uppercase lettering. These words are all presented on a black rectangular box. Due to their size, position within the mark and the colour combination used, it is the words NAMASTE DELHI that have the greater impact in the mark and in which the overall impression resides. Of these two words, however, it is the word NAMASTE which plays the greater role given the non-distinctiveness of the word DELHI being perceived as a geographical location, namely a city in India. The words underneath will play a

considerably lesser role within the contested mark given that they will be perceived as descriptive of the nature of the offering being provided namely modern Indian food. The black rectangle will have no trade mark significance, merely seen as a background upon which the other elements sit.

42. The first earlier mark is for the word NAMASTE in an unremarkable uppercase font. There are no other elements to contribute to the overall impression of the mark which resides in the totality of the word.

43. The second earlier mark is for the words DELHI DARBAR. Again, there are no other elements to contribute to the overall impression of the mark which resides in the two words in combination but weighted in favour of the word DARBAR given that the word DELHI will be seen as a geographical location.

Visual comparison

44. The contested mark and the first earlier mark overlap with the word NAMASTE which is the entirety of the first earlier mark and the first word of the contested mark that will be read. They differ to the extent of the additional words and the presentation and colour combination of the letters used as aforesaid. Weighing up the similarities as against the differences I consider that the marks are visually similar to a medium degree.

45. The second earlier mark and the contested mark only coincide with regards the word DELHI which is the first word of the former and is the second word following the word NAMASTE in the latter. Given that the word DELHI will be perceived as a geographical location it plays a lesser role in the visual impact of both marks. I have already outlined the figurative elements above in the contested mark which are also points of visual differences. Further it is accepted caselaw that the beginning of marks have more impact and so when weighing up the similarities as against the differences I consider that the marks are visually similar to a low degree.

Aural comparison

46. Comparing the first earlier mark and the contested mark the word NAMASTE will be pronounced identically in each mark. The remaining words will be aurally different.

For the reasons already given, I consider that the average consumer is unlikely to pronounce the words underneath NAMASTE DELHI, only articulating these two words when referencing the mark. As a result, I consider that the respective marks are aurally similar to a medium degree. I note, however, Mr Phillip Harris' comments in the *Purity Hemp* trade mark decision, on appeal, where he found that descriptiveness does not render an element negligible or aurally invisible.²² Therefore, if I am wrong and the words CONTEMPORARY INDIAN CUISINE are articulated then the level of aural similarity will be reduced.

47. In so far as the second earlier mark is concerned, the only aural overlap to the contested mark is in the word DELHI. I consider that the second earlier mark will be pronounced as DEH-LI-DAH-BAR and the contested mark will be pronounced as NAM-AST-EH-DEH-LI. For the same reasons i.e. describing the nature of the services, it is unlikely that the words CONTEMPORARY INDIAN CUISINE will be pronounced. Overall, I consider that the respective marks are aurally similar to a low degree on my primary finding and lower if all the words are pronounced in the contested mark.

Conceptual comparison

48. The word NAMASTE in both the contested mark and the first earlier mark will be perceived as an Indian greeting. I consider that a substantial proportion of the relevant public will understand this meaning which is common to both marks and will therefore share the identical concept. The additional elements in the contested mark namely the word DELHI and the words CONTEMPORARY INDIAN CUISINE give rise to conceptual differences but not significantly so given the descriptive context of the words. Overall, I consider that the marks are conceptually similar to between a medium and high degree.

49. When comparing the contested mark as against the second earlier mark, the only commonality in concept is with the word DELHI which will be seen as a geographical location. The remaining elements give rise to conceptual differences which consist of the greeting NAMASTE versus the word DARBAR which has no clear meaning. The words CONTEMPORARY INDIAN CUISINE also create a point of conceptual

²² *The Stockroom (Kent) Ltd v Purity Wellness Group Ltd*, BL O-115-22

difference but not significantly so. Overall, the marks are conceptually similar to a low degree.

Distinctive character of the earlier marks

50. The case of *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97, sets out the legal position to determine the distinctive character of a mark. In this case 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).”

51. Registered trade marks possess varying degrees of inherent distinctive character, some being suggestive or allusive of a characteristic of the goods and services on offer, to those with high inherent distinctive character such as invented words which have no allusive qualities. The degree of distinctiveness is an important factor as it directly relates to whether there is a likelihood of confusion; the more distinctive the earlier mark the greater the likelihood of confusion.

52. The first earlier mark is for the word NAMASTE which will be seen as an Indian greeting. Whilst not an English dictionary word I nevertheless consider that it is commonly used in the UK as a greeting often used in yoga classes for example and its meaning will be known to a substantial portion of the relevant public. Nevertheless, the word is not descriptive or allusive of the services on offer and so I consider that it is inherently distinctive to an average (medium degree).

53. The second mark is for the words DELHI DARBAR. Whilst the word DARBAR does not appear to have any known meaning and is therefore inherently highly distinctive there is no counterpart in the contested mark. The word DELHI is common to both marks but it is a geographical location and therefore solus possesses a low degree of inherent distinctive character. Overall, the second earlier mark as a whole is inherently distinctive to a high degree.

54. Whilst the Opponent has filed evidence and states that it has a considerable goodwill and reputation in its earlier marks, the evidence filed is insufficient to support a claim that the distinctive character of his marks has been enhanced through use. First of all, I note the evidence is provided by the Opponent's legal representative and not the operators of the restaurants or the Opponent himself. It is not a first hand account of the Opponent's business therefore. Secondly the evidence gave no information regarding the level of turnover, promotional expenditure or market share enjoyed by the Opponent. Whilst there is some evidence of the engagement of its customers via social media these are for the most part undated and give no indication as to the time span of that engagement. The number of reviews filed are modest and are mostly undated or dated after the relevant date with only a small number dated before the relevant date. Consequently, the nature of the evidence is such that it would not support a claim to an enhanced level of distinctive character.

Likelihood of confusion

55. When considering whether there is a likelihood of confusion between the marks, I must consider whether there is direct confusion, where one mark is mistaken for the other or whether there is indirect confusion; where the consumer recognises that the marks are not the same but, nevertheless, puts the similarities between the marks and the respective goods/services down to the same or related source.

56. A number of factors must also be borne in mind when undertaking the assessment of confusion. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective services and vice versa. It is also necessary for me to keep in mind a global assessment of all relevant factors when undertaking the comparison and that the purpose of a trade mark is to distinguish the services of one undertaking from another. In doing so, I must consider 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 he has retained in his mind.

57. The differences between the two types of confusion were explained in *L.A. Sugar Limited v By Back Beat Inc*,²³ by Mr Iain Purvis Q.C. (as he then was), sitting as the Appointed Person, who noted 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 recognised 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, 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

²³ BL O/375/10

distinctive in their own right (“26 RED TESCO” would no doubt be such a case).

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

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

58. I bear in mind that the examples as set out by Mr Purvis in *L.A. Sugar* (above) are not exhaustive and that they are only intended to be illustrative of the general approach.²⁴ Furthermore, in *Liverpool Gin*, Arnold L.J. pointed out that there must be a “proper basis” for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion. A finding of indirect confusion should not be made merely because two marks share a common element; it is not enough that one mark merely calls to mind another, this is mere association, not indirect confusion.²⁵

59. I remind myself that I found the following:

- The respective services were mostly identical save for *Providing information about restaurant services* which I found to be similar to a medium degree to the second earlier mark’s *restaurant services*.
- The average consumer will be a member of the general public paying an average (medium) level of attention during the selection/purchasing process, predominantly via visual means but not discounting aural considerations.
- The contested mark and the first earlier mark are visually and aurally similar to a medium degree. The contested mark and the second earlier mark are visually and aurally similar to a low degree. If all the contested mark’s verbal elements are articulated I found that the aural similarity between the respective marks would be lower in each case.

²⁴ *Liverpool Gin Distillery Limited v Sazerac brands LLC* [2021] EWCA Civ 1207

²⁵ *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17

- Conceptually the respective marks share the concept of a greeting NAMASTE and a geographical location DELHI otherwise there is no shared concept.
- The first earlier mark is inherently distinctive to an average (medium) degree and the common element DELHI in the second earlier mark is inherently distinctive to a low degree as it is a geographical location and I note that the right to its exclusive use is disclaimed by the Opponent.

60. I will deal with the contested mark and the second earlier mark first. Given my findings of the low similarity between the marks visually and aurally and the low inherently distinctive character in only the element in common namely DELHI I find no likelihood of confusion, either directly or indirectly. The selection process is predominantly visual and I see no possibility of the marks being confused one for the other. The differences between the marks are too great for confusion to arise. The only visual, aural and conceptual overlap is in the word DELHI and no consumer is likely to consider that a restaurant provider providing Indian food is likely to be the only undertaking using this word. Any association between the respective marks contemplated by the consumer will merely be a calling to mind in a situation envisaged in *Duebros*.

61. Moving on to the first earlier mark and the contested mark. Taking all the global factors identified above into account and my findings as set out earlier in my decision, I consider that it is likely that consumers will misremember or imperfectly recall the marks one for the other. This is because, in my view, consumers when looking to recall the marks, will focus on the word NAMASTE in each mark which is the entirety of the earlier mark and the more dominant element of the two focal words of the contested mark. It is my view that consumers would fail to recall the omission or addition of the additional verbal elements of the contested mark given their non distinctive and descriptive nature or the particular colourful presentation of the letters, particularly since the marks are not compared side by side. I have factored in that notional and fair use of a word only mark means that the first earlier mark could be used in any font or colour means that it could be used in any ordinary colour combination and not just in black and white. I accept that the gradient/shading of the colours used in the contested mark arguably fall outside fair and notional user but the use of the earlier mark in colour may nonetheless bring the marks closer. Taking into account, the

interdependency principle and the (mostly) identical nature of the respective services, I consider that the differences between the marks are likely to be misremembered or imperfectly recalled one for the other as a result of the commonality of the identical word NAMASTE. There would in my view be a likelihood of direct confusion between the marks. This finding would apply equally to the services I found to be similar to only a medium degree.

62. However, if I am wrong and those differences between the particular presentational elements and the additional words, are noticed, I still believe that confusion will arise. This is because those differences in the contested mark in my view will be regarded as a more stylised version and the differences put down to an alternative mark being used by the same or related undertaking. The figurative mark being used on signage and menus as opposed to the word only mark used in plain text, for example. The word NAMASTE will be considered by consumers as the indicator of origin such that the stylistic differences and the additional low and non distinctive/descriptive elements will be attributed to the use by the same or related undertaking in different contexts. I find there would be a likelihood of indirect confusion. These findings apply equally either way even if the assessment were based on a lower degree of aural similarity where all of the contested mark's verbal elements were articulated.

63. Whilst Mr Kumar filed evidence listing a number of companies using the word NAMASTE in the title of their company name, I do not consider that this evidence was sufficient to show that the distinctiveness of the word NAMASTE has been weakened.²⁶ The screenshots produced relating to the use of the words NAMASTE for restaurants were undated and therefore these do not assist the Applicant. There was also insufficient evidence that gives any indication as to how these respective companies were referred to by way of signs or how they were effectively used in the market prior to the relevant date or the extent to which UK consumers were exposed to them as at the relevant date.

64. Further, whilst I have considered the Applicant's evidence and the claimed use of his mark alongside the Opponent's marks for a period of time, it seems to me that the extent of this evidence is relatively small and unhelpful, on the whole being undated,

²⁶ *Lifestyle Equities C.V and Lifestyle Licensing B.V v Royal County Berkshire Polo Club Limited and others.*

only relating to one premises with no indication of its turnover. Further, I note that the use is confined to a limited geographical location in the UK namely Aberdeen. I also note the Opponent's mark is registered as a word mark, which provides protection for its use in whatever form, colour or typeface used, and as such I must make a notional assessment on that basis. It is my view in the circumstances, that the Applicant's minimal evidence of use cannot be considered to really give weight to an argument that the use of the contested trade mark on a national level, in relation to the services filed, will not result in confusion with the notional use of the Opponent's registered word mark for the services relied upon in this instance.

65. The Opponent's claim under section 5(2)(b) succeeds in its entirety based on reliance on the first earlier mark.

Section 5(4)(a)

66. Strictly speaking having succeeded under section 5(2)(b) it is unnecessary for me to consider the ground of opposition under section 5(4)(a) as this will not place the Opponent in any stronger position. However, for completeness I shall deal with this ground albeit briefly.

67. Section 5(4)(a) states as follows:

“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,

.....

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.”

68. Subsection (4A) of section 5 of the Act states as follows:

“(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.”

69. 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).”

70. Halsbury’s Laws of England Vol. 97A (2021 reissue) provides further guidance with regard to establishing the likelihood of deception. In paragraph 636 it is noted (with footnotes omitted) that:

“Establishing a likelihood of deception generally requires the presence of two factual elements:

- (1) that a name, mark or other distinctive indicium used by the claimant has acquired a reputation¹ among a relevant class of persons; and
- (2) that members of that class will mistakenly infer from the defendant’s use of a name, mark or other indicium which is the same or sufficiently similar that the defendant’s goods or business are from the same source² or are connected.

While it is helpful to think of these two factual elements as two successive hurdles which the claimant must surmount, consideration of these two aspects cannot be completely separated from each other.

The question whether deception is likely is one for the court, which will have regard to:

- (a) the nature and extent of the reputation relied upon,
- (b) the closeness or otherwise of the respective fields of activity in which the claimant and the defendant carry on business;
- (c) the similarity of the mark, name etc used by the defendant to that of the claimant;
- (d) the manner in which the defendant makes use of the name, mark etc complained of and collateral factors; and
- (e) the manner in which the particular trade is carried on, the class of persons who it is alleged is likely to be deceived and all other surrounding circumstances.

In assessing whether deception is likely, the court attaches importance to the question whether the defendant can be shown to have acted with a fraudulent intent, although a fraudulent intent is not a necessary part of the cause of action.”

Relevant date

71. The prima facie relevant date is the date of the application of the contested mark, namely 28 April 2022. The Applicant states that he commenced trading under the contested mark since 2018 and has generated his own goodwill and reputation. Despite this statement, as was confirmed by Mr Thomas Mitcheson K.C. in *CASABLANCA Trade Mark*,²⁷ “generation of goodwill by the applicant is not required ...the relevance of the activities of the applicant is limited to establishment of the date that the actionable use began”. Whilst Mr Kumar filed evidence to support his claim and ordinarily I would consider whether an earlier relevant date of the behaviour complained of should be considered, as will become clear it is unnecessary at this

²⁷ BL O/349/16

stage for me to consider an earlier relevant date and I shall proceed with the assessment as at 28 April 2022.

72. The concept of goodwill was considered by the House of Lords in *Inland Revenue Commissioners v Muller & Co's Margarine Ltd* [1901] AC 217:

“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.”

73. The evidence to establish goodwill comes not from the Opponent but his legal representative Mr Watt. I note that there is no financial information produced at all such as the turnover of the business or details as to the market share held or the number of customers that frequented the Opponent's restaurant at any given time. Further I note Mr Watt states that the restaurant is operated by MSA which is a company owned by the Opponent and the use of the sign by MSA is said to be via a licence. The licence has not been produced, however, nor details as to its terms. Mr Geoffrey Hobbs (as the appointed person) considered the weight to be placed on an advocate providing a witness statement on a party's behalf in *Catwalk Trade Mark* on appeal.²⁸ He commented that whilst there is no bar to a witness giving evidence as to the existence or occurrence of matters that are not within his or her own knowledge,²⁹ the weight to be given to such evidence remains to be assessed with due regard for the provisions of Section 4 of that Act, namely :

“Considerations relevant to weighing of hearsay evidence.

(1) In estimating the weight (if any) to be given to hearsay evidence in civil proceedings the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.

(2) Regard may be had, in particular, to the following –

²⁸ BL O/404/13.

²⁹ Sections 1 and 11 of the Civil Evidence Act 1995; CITYBOND Trade Mark [2007] RPC 13 at paragraph [32].

(a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness; O-404-13 GH\CONTINENTAL SHELF DECISION 28.8.13.docx -15-

(b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated;

(c) whether the evidence involves multiple hearsay;

(d) whether any person involved had any motive to conceal or misrepresent matters;

(e) whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose;

(f) whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight.

The reliability of reported information and the reliability of the manner in which it has been collated for use as evidence are both relevant considerations for the purposes of Section 4.”

74. There are considerable shortcomings in the evidence filed by Mr Watt. Whilst I note that he claims that the evidence was from his own knowledge it was nevertheless lacking in specificity. Further the Opponent was clearly well placed to give evidence of how and by whom the sign is used and in respect of which services. It would have been reasonable and practicable for Mr Singh as the Proprietor of the business to have adduced first hand evidence of such matters. No reasons were provided as to why this did not happen. Further I am not entirely clear regarding the ownership of the goodwill and who consumers would know to be responsible for the provision of the services, to whom payments were made or to whom complaints should be directed. Mr Watt states that MSA uses the sign/marks under licence by consent from Mr Singh but there is no evidence filed to support this. Were the evidence supported by a copy of the actual licence then this may have placed more weight to the assertions that ownership of the goodwill passed to the Opponent despite the use of the sign and operation of the restaurant being by MSA. The fact that the evidence itself is not by

the Proprietor or MSA means that it is more difficult for me to take an inference in the Opponent's favour.

75. Setting aside the issue in relation to the ownership of the goodwill for the time being, the evidence itself is shown to have fallen considerably short with no evidence as to when, where, how, by whom, on what scale or with what frequency any of the services were purchased by consumers. At its height the evidence consists of some customer reviews (but mostly those were undated or dated at the time the witness statement was completed), a handful of blogs and details of its social media following. However, in so far as the latter point, Mr Kumar criticised the volume of these numbers in his evidence and no evidence in reply was filed to counter those criticisms. No evidence has been provided as to the scale of use or with what frequency consumers visited the restaurant. Therefore, setting aside the obvious issue with the ownership of the goodwill, the evidence adduced is too deficient in too many respects for me to find with any certainty the extent of the goodwill attained and whether it is more than trivial to be at a protectable level.

76. Even if I had considered an earlier date as at the behaviour complained of namely 2018, or slightly later, this would not have helped the Opponent regarding his claim to a protectable goodwill given the nature of the evidence filed as he would not have been able to establish a protectable goodwill even at this date and therefore his claim to establishing goodwill would still have failed.

77. I do not find that the Opponent has shown he had goodwill as at the relevant date and without goodwill there can be no misrepresentation or damage.

78. The Opponent's claim for passing off under section 5(4)(a) does not succeed.

Overall conclusion

79. The opposition action under section 5(2)(b) has succeeded and subject to appeal application no. 3782665 shall be refused registration.

80. The Opponent has succeeded and is therefore entitled to a contribution towards his costs. I note however that the evidence he filed was not necessary in relation to support his claim under section 5(2)(b) and was of such a nature that it was wholly inadequate to succeed in supporting a claim under section 5(4)(a). Consequently, I shall reduce the costs to be awarded to the Opponent to reflect this. Costs are awarded

in accordance to the scale as published in Tribunal Practice Notice 2/2016. Taking these matters into account I award costs as follows:

Preparing the statements of ground and considering the counterstatement and TM8:	£250
Filing evidence and considering the other party's evidence:	£500
Preparing for and attendance at a hearing:	£500
Official fee ³⁰ :	£100
Total	£1350

81. I order Namaste Delhi Ltd to pay Mr Rashpal Singh the sum of £1350 as a contribution towards his costs. This sum is to be paid within 21 days of the expiry of the appeal period or within 21 days of the final determination of this case, if any appeal against this decision is unsuccessful.

Dated this 27th day of November 2025

Leisa Davies

For the Registrar

³⁰ Reduced to reflect that only the section 5(2)(b) ground succeeded.