

O/1128/25

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK4165180

BY ARMOUR PACKAGING LTD

TO REGISTER THE TRADE MARK:



IN CLASSES 16 & 21

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 600003632

BY SATKOHI SONS LTD

## **Background and pleadings**

1. On 25 February 2025, Amour Packaging Ltd (“the applicant”) applied to register the trade mark shown on the cover page of this decision in the UK. The application was published for opposition purposes on 7 March 2025. The goods applied for are as follows:

Class 16: Cake boxes of cardboard; Paper bags for packaging; Packaging boxes of cardboard; Packaging boxes of paper; Plastic films used as packaging for food; Paper pouches for packaging; Paper roll stock for packaging; Packaging containers comprised of paperboard for food and beverages; Boxes, cartons, storage containers, and packaging containers made of paper or cardboard; Paper packaging and containers for food and beverages comprised of materials designed to lessen adverse effects on the environment; Paperboard trays for packaging food; Bags of plastic for packaging.

Class 21: Household or kitchen utensils and containers (not of precious metal or coated therewith); foil food containers; plastic food containers; containers for household or kitchen use made of plastics material; Cardboard cups.

2. The application was opposed by Satkahi Sons Ltd (“the opponent”) on 17 March 2025. The opposition is based upon section 5(2)(b) of the Trade Marks Act 1994 (“the Act”) and is against all of the applied for goods.

3. The opponent relies on the following trade mark:

UK3858310

AMOUR PACKAGING

Filing date: 12 December 2022

Registration date: 10 March 2023

Relying upon all of the goods for which the earlier mark is protected, namely:

Class 16: Paper; Napkin paper; Pencil cups; Napkins of paper; Paper napkins; Bags of paper; Paper bags; Paper and cardboard; Notebook paper; Greaseproof paper; Paper table napkins; Paper stock [printing paper]; Parchment paper; Bags (Conical paper -); Conical paper bags; Sandwich bags [paper]; Crepe paper; Paper ribbon; Paper containers; Wax paper; Paper for photocopies; Kraft paper; Paraffined paper [waxed paper]; Tablemats of paper; Baking paper; Photocopy paper; Postcard paper; Paper coasters; Coasters of paper; Paper tablecloths; Tablecloths of paper; Paper ribbons; Ovenproof paper; Bibs of paper; Paper bibs; Corrugated paper; Handkerchiefs of paper; Paper handkerchiefs; Tissue paper; Envelope paper; Paper lunch bags; Paper book markers; Paper sacks; Waxed paper; Drawing paper; Paper boxes; Boxes of paper; Paper stationery.

Class 21: Paper cups; Cups of paper or plastic; Paper baking cups; Baking cups of paper; Biodegradable paper pulp-based cups; Cardboard cups; Coffee cups; Tea cups; Plates (Paper -); Paper plates; Cup holders; Biodegradable paper pulp-based bowls; Plastic cups; Paper hand towel dispensers; Cups; Cup lids.

4. The opponent claims that the marks are similar, with the only difference being the inclusion of 'LTD' in the applied for mark. It also claims that the applicant's goods are similar and that this could lead to confusion.<sup>1</sup>

5. The applicant filed a counterstatement denying the claims made.

6. Rule 6 of the Trade Marks (Fast Track Opposition) (Amendment) Rules 2013, S.I. 2013 No. 2235, disapplies paragraphs 1-3 of Rule 20 of the Trade Mark Rules 2008, but provides that Rule 20 (4) shall continue to apply. Rule 20(4) states that:

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<sup>1</sup> Within their pleadings, the opponent mentioned that the applied for mark could 'tarnish our brand image' however, tarnishing is relevant to claims under section 5(3) not section 5(2) and therefore, I will consider this no further.

“(4) The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit.”

7. The net effect of these changes is to require the parties to seek leave in order to file evidence in fast track oppositions. No leave was sought to file any evidence in respect of these proceedings.

8. Rule 62 (5) (as amended) states that arguments in fast track proceedings shall be heard orally only if (i) the Office requests it or (ii) either party to the proceedings requests it and the registrar considers that oral proceedings are necessary to deal with the case justly and at proportionate cost; otherwise, written arguments will be taken. A hearing was neither requested nor considered necessary and no further submissions were filed by either party. This decision is taken following a careful consideration of the papers.

9. The applicant is represented by RevoMark and the opponent represents themselves.

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

## **DECISION**

### **Section 5(2)(b)**

11. Section 5(2)(b) is being relied upon and 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”.

12. An earlier trade mark is defined in section 6 of the Act, the relevant parts of which state:

“6. (1) In this Act an “earlier trade mark” means -

(a) a registered trade mark, international trade mark (UK) or Community trade mark or international trade mark (EC) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks,

(2) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of subsection (1)(a) or (b), subject to its being so registered”.

13. In these proceedings, the opponent is relying upon the trade mark shown in paragraph 3, above, which qualifies as an earlier trade mark under the above provisions. As this trade mark had not completed its registration process more than 5 years before the filing date of the application in suit, it is not subject to proof of use, as per section 6A of the Act. The opponent can, as a consequence, rely upon all of the goods it has identified.

### **Case law**

14. 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 Office for Harmonisation in the Internal Market (Trade Marks and Designs) (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 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 the judgment of the Court of Justice of the European Union (“CJEU”) in *Canon*, Case C-39/97, the court stated at paragraph 23 that:

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

16. In *Boston Scientific Ltd v OHIM*, Case T-325/06, the General Court (“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”.

17. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, 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.

18. In *Gérard Meric v Office for Harmonisation in the Internal Market (OHIM) ('Meric')*, Case T-133/05, the 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 OHI-M - 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. For the purposes of considering the issue of similarity of goods and services, it is permissible to consider groups of terms collectively where they are sufficiently comparable to be assessed in essentially the same way and for the same reasons (see *Separode Trade Mark* (BL O/399/10) and *BVBA Management, Training en Consultancy v. Benelux-Merkenbureau* [2007] ETMR 35 at paragraphs 30 to 38).

20. The goods to be compared are as follows:

<b>Contested goods</b>	<b>Earlier goods</b>
<p>Class 16: Cake boxes of cardboard; Paper bags for packaging; Packaging boxes of cardboard; Packaging boxes of paper; Plastic films used as packaging for food; Paper pouches for packaging; Paper roll stock for packaging; Packaging containers comprised of paperboard for food and beverages; Boxes, cartons, storage containers, and packaging containers made of paper or cardboard; Paper packaging and containers for food and beverages comprised of materials designed to lessen adverse effects on the environment; Paperboard trays for packaging food; Bags of plastic for packaging.</p> <p>Class 21: Household or kitchen utensils and containers (not of precious metal or coated therewith); foil food containers; plastic food containers; containers for household or kitchen use made of plastics material; Cardboard cups.</p>	<p>Class 16: Paper; Napkin paper; Pencil cups; Napkins of paper; Paper napkins; Bags of paper; Paper bags; Paper and cardboard; Notebook paper; Greaseproof paper; Paper table napkins; Paper stock [printing paper]; Parchment paper; Bags (Conical paper -); Conical paper bags; Sandwich bags [paper]; Crepe paper; Paper ribbon; Paper containers; Wax paper; Paper for photocopies; Kraft paper; Paraffined paper [waxed paper]; Tablemats of paper; Baking paper; Photocopy paper; Postcard paper; Paper coasters; Coasters of paper; Paper tablecloths; Tablecloths of paper; Paper ribbons; Ovenproof paper; Bibs of paper; Paper bibs; Corrugated paper; Handkerchiefs of paper; Paper handkerchiefs; Tissue paper; Envelope paper; Paper lunch bags; Paper book markers; Paper sacks; Waxed paper; Drawing paper; Paper boxes; Boxes of paper; Paper stationery.</p>

	<p>Class 21: Paper cups; Cups of paper or plastic; Paper baking cups; Baking cups of paper; Biodegradable paper pulp-based cups; Cardboard cups; Coffee cups; Tea cups; Plates (Paper -); Paper plates; Cup holders; Biodegradable paper pulp-based bowls; Plastic cups; Paper hand towel dispensers; Cups; Cup lids.</p>
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Class 16

*Cake boxes of cardboard; Packaging boxes of cardboard;*

21. I consider there to be an overlap in nature and purpose between the above cake boxes of cardboard and the opponent's 'paper boxes' as both are types of boxes which are intended to contain other items. There could be an overlap in user and trade channels. They are not complementary but they could be in competition, with the consumer choosing between the two materials to best suit their circumstances. I therefore find these goods similar to a high degree.

*Paper bags for packaging;*

22. The above term from the applicant's specification falls within the wider term 'paper bags' from the opponent's specification and therefore, I find these goods to be identical under the *Meric* principle.

*Packaging boxes of paper;*

23. This term will likely fall within the opponent's 'paper boxes' and therefore I find the goods to be identical using the *Meric* principle.

*Plastic films used as packaging for food;*

24. There will likely be an overlap in user between the above goods and the opponent's 'Sandwich bags [paper]' as it will be someone looking to store/transport their food items. It does not strike me that there is any obvious overlap in nature but there is a shared purpose (again, packing and storing food). They are not complementary however, they could be in competition- as a consumer might choose between using paper or plastic film to cover/store their food. I therefore find these goods to be similar to between a low and medium degree.

*Paper pouches for packaging; Paper packaging and containers for food and beverages comprised of materials designed to lessen adverse effects on the environment;*

25. The opponent has 'paper containers' within their specification which I consider will include the applicant's term and, therefore, I find these goods identical under the *Merit* principle.

*Paper roll stock for packaging;*

26. I consider there to be an overlap in user and purpose between 'paper roll stock for packaging' and the opponent's 'corrugated paper' as both goods can be used as packaging for other items. They can both come in the form of rolls so there is an overlap in nature and there could be an overlap in trade channels. They are not complementary but could be in competition. I therefore find them to be similar to between a medium and a high degree.

*Packaging containers comprised of paperboard for food and beverages; Paperboard trays for packaging food;*

27. I believe there is likely to be an overlap in purpose and user between the above goods and the opponent's 'paper containers'. The nature overlaps insofar as the goods are containers or trays however, they differ in that one is made from paper and the other paperboard. They could overlap in trade channels and could be in competition-

a consumer might choose between one material or the other for their specific purpose. They are not complementary. I therefore find the goods to be similar to a medium to high degree.

*Boxes, cartons, storage containers, and packaging containers made of paper or cardboard;*

28. A number of the opponent's goods, namely, 'paper boxes; paper containers; boxes of paper' fall within the above goods of the applicant and therefore, bearing in mind the principle set out in *Merix*, I find the goods to be identical.

*Bags of plastic for packaging;*

29. There is an overlap of user and purpose between bags of plastic for packaging and the opponent's 'paper bags'. The nature overlaps insofar as they are both bags but are made from different materials. They could overlap in trade channels and could be in competition- a consumer might choose between one material or the other for their specific purpose. They are not complementary. I therefore find the goods to be similar to a medium to high degree.

*Class 21*

30. *Cardboard cups* are found identically in both specifications.

*Household or kitchen utensils and containers (not of precious metal or coated therewith);*

31. I consider that it is possible that tea cups and coffee cups (as found in the opponent's specification) could be considered as types of kitchen or household utensils and therefore, I find the above terms to be identical under the *Merix* principle. In the event that I am wrong in my understanding, I consider there to be an overlap in users and nature (although I note that the applicant's term is very wide and could cover a number of types of utensil/container). All terms can be used in relation to consumption of food/drink. There could be an overlap in trade channels. They are not

in competition nor are they complementary. I therefore find them to be similar to between a medium and high degree.

*Foil food containers; plastic food containers; containers for household or kitchen use made of plastics material;*

32. I believe there is likely to be an overlap in purpose and user between the above goods and the opponent's 'paper containers'. The nature overlaps insofar as the goods are containers however, they differ in that one is made from paper and the opponent's goods are made from either foil or plastic. They could overlap in trade channels and could be in competition- a consumer might choose between one material or the other for their specific purpose. They are not complementary. I therefore find the goods to be similar to a medium to high degree.

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

33. 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 or services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97.

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

35. The average consumer of the goods will predominantly be the general public but may also be a business or professional purchaser.

36. Most of the goods are likely to be cheaper, more everyday items. The average consumer will take into consideration cost, quality, size and suitability of the goods. The goods will likely be purchased relatively frequently. The average consumer will pay a low to medium degree of attention when purchasing the goods.

37. The goods are likely to be obtained by self-selection from the shelves of a retail outlet, or online equivalent. Alternatively, the goods may be purchased following the perusal of advertisements or catalogues. Visual considerations are, therefore, likely to dominate the selection process. However, I do not discount that there may also be an aural component to the purchase through advice sought from a sales assistant.

### **Comparison of the marks**


38. 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.”

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

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

40. The respective trade marks are shown below:

Contested mark	Earlier mark
	<p style="text-align: center;"><b>AMOUR PACKAGING</b></p>

41. The earlier mark is a word mark comprised of 'AMOUR' and 'PACKAGING'. For some of the goods, the word 'PACKAGING' is descriptive or allusive and therefore, is less distinctive, making 'AMOUR' the dominant and distinctive element of the mark. For the goods for which 'PACKAGING' is not descriptive or allusive, the overall impression of the mark lies in the combination of the two words.

42. The contested mark consists of the words 'AMOUR PACKAGING LTD' in a standard typeface and presented in blue. Above the words is a device that consists of the capital letters 'A' and 'P' conjoined (also presented in blue) with a black vertical line down the centre. Despite the larger size of the device, the eye is naturally drawn to the readable element of the mark. For the contested mark, the term 'PACKAGING' is descriptive of the goods within their specification and therefore, is less distinctive. The term 'LTD' is a commonly understood abbreviation for the word 'LIMITED' and is a reference to the legal status of a company. I find that 'Ltd' is not distinctive in relation to the Applicant's goods and accordingly has limited relative weight in the overall impression of the mark. Indeed, there is a real possibility that the average consumer of the goods may fail to perceive 'Ltd' as an intentional part of the brand name, therefore it would be accorded less attention. Therefore, the 'AMOUR' element will be

the dominant and distinctive element with the other words and device playing smaller roles.

43. Visually, the marks share the words 'AMOUR PACKAGING'. I also bear in mind that normal and fair use of the opponent's word mark means that it may be used in any standard typeface, as well as in upper and lower-case lettering. The marks differ in that the contested mark includes 'LTD' and a device, neither of which have any counterpart in the earlier mark. I therefore find the marks visually similar to between a medium and high degree.

44. Turning to the aural comparison, once again the marks share the words 'AMOUR PACKAGING' which will be pronounced identically. The contested mark also contains 'LTD' which I believe most people will pronounce either as 'LIMITED' or letter by letter. In either case, it has no counterpart in the earlier mark and is therefore a point of difference. I consider it unlikely that the letters 'AP' that form the device in the contested mark will be articulated, as they are likely to be seen as a logo consisting of the first letters of 'AMOUR' and 'PACKAGING'. The marks are therefore aurally similar to a high degree.

45. Conceptually, I consider that a significant proportion of consumers will view 'AMOUR' as being French (or foreign) for 'love' and the meaning is the same across both marks as is the word 'PACKAGING'. As mentioned above, 'LTD' simply refers to the fact that they are a limited company and is the only point of conceptual difference between the marks. Therefore, I find the marks to be conceptually similar to a high degree.

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

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

"22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the

goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-2779, paragraph 49).

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

47. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods and services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use that has been made of it however, no evidence of use has been provided and therefore, I only have the inherent position to consider.

48. I consider that AMOUR will be seen as the French (or foreign) word for ‘love’. The word ‘love’ is somewhat laudatory on the basis that it invokes a positive feeling towards, in this instance, packaging. However, I recognise that this mark presents ‘love’ in a foreign language which increases its distinctiveness slightly. Therefore, where packaging is descriptive of the goods, I consider the earlier mark to be inherently distinctive to between a low and medium degree. Where the term packaging is not descriptive of the goods in question, this does raise the distinctiveness of the mark to a medium degree.

## Likelihood of Confusion

49. 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 scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. 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 goods and vice versa. It is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the goods and the nature of the purchasing process. In doing so, I must be alive to the fact 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.

50. The following factors must be considered to determine if a likelihood of confusion can be established:

- For the goods whereby 'PACKAGING' is descriptive in the earlier mark, 'AMOUR' is the dominant and distinctive element of the mark. For the goods for which 'PACKAGING' is not descriptive or allusive, the overall impression of the mark lies in the combination of the two words.
- 'AMOUR' is the dominant and distinctive element of the contested mark with the other elements playing lesser roles.
- I have found the marks to be visually similar to between a medium and a high degree.
- I have found the marks to be aurally and conceptually similar to a high degree.
- I have identified the average consumer as the general public (not discounting professionals), who will select the goods primarily by visual means, although I do not discount an aural component.

- I have concluded that a low to medium degree of attention will be paid during the purchasing process.
- The parties' goods are identical or similar to between a low (to medium) and a high degree.

51. Given I have found that the earlier mark is wholly replicated within the contested mark, they are aurally and conceptually highly similar and that the inclusion of the device and term 'LTD' within the contested mark are of low distinctiveness, I am satisfied that the addition of these could be overlooked by the average consumer paying a low to medium degree of attention and that they could indeed mistake one mark for the other. Consequently, I find there to be direct confusion between the marks (even where the similarity of goods is low to medium).

52. In case I am wrong in this finding, I will now go on to consider indirect confusion, which was described in the following terms by Iain Purvis Q.C. sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10:

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

53. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he

said at [16] that “a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion”. Arnold LJ agreed, pointing out that there must be a “proper basis” for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

54. The ‘AMOUR’ element is distinctive in both marks and could be seen as the brand name and I believe the average consumer will likely see the contested mark as an alternative mark being used by the same or economically linked undertakings or a rebranding effort. It follows therefore, that I find there to be a likelihood of indirect confusion.

## **Conclusion**

55. The opposition succeeds in its entirety against all of the applied for goods and, therefore, the application will be refused.

## **Costs**

56. Award of costs in Fast Track proceedings are based upon the scale as set out in Tribunal Practice Notice 2 of 2023. The opponent would normally be entitled to a contribution towards its costs.

57. However, as the opponent is unrepresented, upon receipt of the admissible form TM8 the tribunal wrote to them and invited them to indicate whether they intended to make a request for an award of costs. The opponent was informed that, if so, they should complete a Pro Forma, providing details of their actual costs and accurate estimates of the amount of time spent on various activities associated with the proceedings. They were informed that “if the pro forma is not completed and returned, costs, other than official fees arising from the action (excluding extensions of time) may not be awarded”.

58. The opponent did not file a completed Pro Forma. Therefore, I can only award them their official fee of £100.

59. I order Amour Packaging Ltd to pay Satkohi Sons Ltd the sum of £100. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

**Dated this 28<sup>th</sup> day of November 2025**

**L Nicholas  
For the Registrar**