

O/1188/24

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. 3906903

IN THE NAME OF
SAJID HUSAIN BEGUM

TO REGISTER THE FOLLOWING OF TRADE
MARK:

ilovepackaging

IN CLASS 21

AND

IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 600002955
BY TAXILA LIMITED

Background and pleadings

1. On 02 May 2023, Sajid Husain Begum (“the Applicant”) applied to register the trademark shown on the front page of this decision in the UK under application number 3906903. The application was published for opposition purposes on 19 May 2023 and registration is sought for the following goods:

Class 21: Glass tableware; Glass bottles; Glass containers; Glass cups; Glass carafes; Glass [receptacles]; Disposable paperboard bakeware; Glass flasks; Glass flasks [containers]; Glass jars; Glass plates; Glass pans; Disposable chopsticks; Glass mugs; Porous glass; Glass vials [receptacles]; Disposable lids for household containers; Reusable plastic water bottles sold empty; Table plates (Disposable -); Disposable table plates; Disposable aluminum foil containers for household purposes; Glass flowerpots; Disposable aluminium foil containers for household purposes; Glass sheets; Glass bowls; Bowls (Glass -); Glass stoppers for bottles; Insulated glass holders; Reusable stainless steel water bottles sold empty; Glass pots; Plastic bottles; Glass decanters; Decorative stained glass; Glass caps; Glass stoppers; Stoppers (Glass -); Glass vases; Drinking glass holders; Ornamental glass; Glass holders; Reusable stainless steel water bottles; Glass ornaments; Enamelled glass; Baking containers made of glass; Plastic water bottles [empty]; Glass lids for industrial packaging containers; Glass cartridges for medication, empty; Sheet glass (except glass used in building); Industrial packaging containers of glass; Glass dishes; Decorative glass spheres; Unprocessed glass; Jars (Glass -) [carboys]; Glass jars [carboys]; Stained glass figurines; Plastic water bottles; Glass holders for candles; Glass bulbs [receptacles]; Powdered glass for decoration; Food preserving jars of glass; Figurines of glass; Polished plate glass; Decorative boxes of glass; Crude glass; Plastic bowls [household containers]; Boxes of glass; Ornamental glass spheres; Plate glass for cars; Glass powder; Bathroom glass holder; Plastic cups; Plate glass [raw material]; Household plastic gloves.

2. The application is opposed by TAXILA LIMITED (“the Opponent”). The opposition was filed on 16 July 2023 under the fast-track procedure and is based upon section 5(1) and section 5(2)(a) of the Trade Marks Act 1994 (“the Act”). The opposition is directed against all goods of the application. The Opponent relies upon the following series of trade marks:

ilovepackaging (Mark 1 in series of 2)

ILOVEPACKAGING (Mark 2 in series of 2)

UKTM no. 3840378

Filing date 18 October 2022; registration date 20 January 2023.

Relying on all goods, namely:

Class 21: Tableware; Coasters (tableware); Ceramic tableware; Scoops [tableware]; Glass tableware; Coffee services [tableware]; Tableware of porcelain; Tea services [tableware]; Oven-to-table tableware; Tableware, cookware and containers; Toby jugs; Jugs; Small jugs; Milk jugs; Beer jugs; Cream jugs; Wine jugs; Syrup jugs; Vacuum jugs (Non-electric -); Jugs of precious metal; Milk jugs; Plastic bottles; Plastic cups; Plastic buckets; Plastic plates; Plastic coasters; Plastic funnels; Plastic plates [dishes]; Plastic water bottles; Plastic bowls [basins]; Plastic bins [dustbins]; Household plastic gloves; Planters of plastic; Tablemats of plastic; Plastic spray nozzles; Plastic place mats; Cups; Glass cups; Coffee cups; Tea cups; Cups (Fruit -); Paper cups; Egg cups; Drinking cups; Draining trays; Litter trays; Butlers' trays; Cake trays; Meal trays; Biodegradable trays; Compostable trays; Cutlery trays; Crumb trays; Trays [household]; Cabarets [trays]; Serving trays; Seed trays; Seed tray inserts; Pizza tray stands; Ice cube trays; Baking trays made of aluminium; Plastics trays for use as litter trays for cats; Draining trays; Litter trays; Plastic funnels; Bowls; Bowls (Glass -); Finger bowls; Fruit bowls; Compostable bowls; Shaving bowls; Goldfish bowls; Sugar bowls; Mixing bowls; Plastic bowls [basins]; Japanese rice bowls (chawan); Laundry baskets; Litter baskets; Steamer baskets; Flower baskets; Towel baskets; Waste baskets; Plant baskets; Bread baskets; Mixing spoons; Slotted spoons; Spoon rests; Spoon

supports; Serving spoons; Basting spoons; Cutlery trays; Cutlery rests; Pizza peels; Pizza stones; Roller tubes for peeling garlic; Pizza tray stands; Platters; Serving platters; Serving platters of precious metal; Pitchers; Creamer pitchers; Wash basin pitchers; Meat tongs; Serving tongs; Vegetable tongs; Asparagus tongs; Spaghetti tongs; Bread tongs; Sugar tongs; Barbecue tongs; Ice tongs; Salad tongs; Glass pots; Litter trays; Litter bins; Litter baskets; Buckets; Plastic buckets; Paint buckets; Bottle buckets; Ice buckets; Serving ladles; Flat cooking ladles; Bottles; Refrigerating bottles; Perfume bottles; Water bottles; Bottle pourers; Biodegradable bottles; Bottle coolers; Plastic bottles; Vacuum bottles; Reusable bottles; Glass bottles; Bottles (Refrigerating -); Bottle cradles; Bottle brushes; Gourds (Bottle -); Bottle stands; Bottle buckets; Bottle openers; Bottle gourds; Drinking bottles; Household plastic gloves; Gloves for gardening; Piping bags; Bota bags; Pastry bags; Isothermic bags; Cool bags; Food mashers; Vegetable mashers; Potato ricers; Feather-dusters; Dusters; Window dusters; Furniture dusters; Dusters (Furniture -); Feather brooms; Non-electric blind dusters; Disposable duster sleeves for cleaning; Vegetable brushes with peelers; Baking mats; Vinyl place mats; Plastic place mats; Sushi rolling mats; Drip mats for tea; Place mats of plastic; Dinner mats of plastics material; Sponges; Cleaning sponges; Bath sponges; Body sponges; Kitchen sponges; Scouring sponges; Scrub sponges; Squeegee sponges; Sponge holders; Cosmetic sponges; Facial cleansing sponges; Cookery molds; Pastry molds; Cupcake molds; Chocolate molds; Cake molds; Pudding molds; Confectioners' molds; Ice cube molds; Cookery molds [moulds]; Cake molds [moulds]; Molds (Ice cube -); Molds [kitchen utensils]; Scalp scratchers; Itch scratchers; Back scratchers; Reusable silicone food covers; Silicone baking cups; Baking cases of silicone; Kitchen utensils of silicon; Silicone muffin baking liners; Egg separators; Egg yolk separators; Egg separators [kitchen utensils]; Foam toe separates for use in pedicures; Foam toe separators for use in pedicures; Egg separators, non-electric, for household purposes; Plant holders; Glass holders; Bouquet holders; Cup holders; Toothbrush holders; Pot holders; Shampoo holders; Candle holders; Toothpick holders; Tealight holders; Serviette holders; Towel holders; Napkin holders; Brush holders; Sponge holders; Soap holders; Tablecloth holders; Inflatable drink holders; Floating drink holders; Foam drink holders; Bathroom glass holder; Body cleanser holders; Hand soap holders;

Holders for cosmetics; Shaving brush holders; Flower pot holders; Holders for plants; Liquid soap holders; Toilet tissue holders; Holders (Toilet paper -); Table napkin holders; Makeup sponge holders; Holders for towels; Corn cob holders; Toilet brush holders; Place card holders; Toilet roll holders; Candle jars [holders]; Shower gel holders; Kitchen paper holders; Incense stick holders; Menu card holders; Holders for brushes; Drinking glass holders; Holders for toothbrushes; Holders for tumblers; Toilet paper holders; Holders for flowers; Insulated glass holders; Plastic juice box holders; Portable beverage container holders; Holders for shaving brushes; Water closet brush holders; Boot removers; Electric lint removers; Non-electric lint removers; Battery operated lint removers; Make-up removing appliances; Sandwich boxes; Soap boxes; Candy boxes; Lunch boxes; Lunch-boxes; Picnic boxes; Bento boxes; Boxes (Soap -); Window boxes; Cool boxes; Bread boxes.

3. By virtue of its earlier filing date, the Opponent's mark constitutes an earlier mark within the meaning of section 6 of the Act. As the mark had not completed its registration process more than five years before the relevant date (the filing date of the mark in issue), it is not subject to proof of use pursuant to section 6A of the Act. The Opponent can, therefore, rely upon all of the goods it has identified.

4. The Opponent submits that there is a likelihood of confusion because the Applicant's mark is identical to the Opponent's and the respective goods are identical or similar, giving rise to a likelihood of confusion.

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

6. Both parties in these proceedings are litigants in person acting without legal representation.

7. Rule 6 of the Trade Marks (Fast Track Opposition (Amendment) Rules 2013, S.I. 2013 2235 disapplies paragraphs 1-3 of Rule 20 of the Trade Mark Rules 2008, but it provides that Rule 20(4) shall continue to apply. Rule 20(4) states that:

“(4) The registrar may, at any time, give leave to either party to file evidence

upon such terms as the registrar thinks fit.”

8. The effect of the above is to require parties to seek leave in order to file evidence in fast track oppositions. Further, 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.

9. In this case, the parties were advised by way of the official letter dated 08 April 2024 that any request to be heard must be made on or before 22 April 2024. The Applicant filed a request to be heard on the 23 April 2024. The Applicant’s request was refused on the basis that the reasons for the request were unrelated to grounds of opposition and the request was received after the given deadline.

10. The Opponent filed written submissions on 08 May 2024. The Applicant filed written submissions on 29 May 2024.

11. While neither party sought leave to file evidence, on 08 May 2024 and 29 May 2024 respectively, the Opponent and the Applicant filed documents alongside their written submissions which are evidential in content. As no leave to file evidence had been sought by the parties this evidence cannot be taken into consideration. In any event, the evidence provided by the Parties is not relevant to the pleaded grounds under sections 5(1) and 5(2)(a) of the Act. These grounds require, simply, a notional and objective assessment as to whether there is a likelihood of confusion between the marks for any, or all, of the goods at issue.

Preliminary remarks

12. Within their counterstatement and written submissions the Applicant has commented on their prior use of the “ilovepackaging” mark, stating that they have been trading under the mark since at least 2016. The Applicant’s reliance on their prior use of the mark is not a viable argument. Tribunal Practice Notice (“TPN”) 4/2009 “Trade mark opposition and invalidation proceedings – defences” explains the position

with regard to defences based on use of the trade mark under attack which precedes the date of use or registration of the mark relied upon by the attacker under sections 5(1) and 5(2). It states as follows:

“The viability of such a defence was considered by Ms Anna Carboni, sitting as the appointed person, in *Ion Associates Ltd v Philip Stainton and Another*, BL O/-2111/-09. Ms Carboni rejected the defence as being wrong in law.

Users of the Intellectual Property Office are therefore reminded that defences to section 5(1) or (2) grounds based on the applicant for registration/registered proprietor owning another mark which is earlier still compared to the attacker’s mark, or having used the trade mark before the attacker used or registered its mark, are wrong in law. If the owner of the mark under attack has an earlier mark or right which could be used to oppose or invalidate the trade mark relied upon by the attacker, and the applicant for registration/registered proprietor wishes to invoke that earlier mark/right, the proper course is to oppose or apply to invalidate the attacker’s mark.”¹.

13. This was communicated to the parties in the official letter dated 25 November 2023.

14. Within their written submissions the Applicant also comments on the use of the Opponent’s mark in the UK.

15. As I have outlined above, the earlier mark had not completed its registration process more than five years before the relevant date (the filing date of the mark in issue). Consequently, pursuant to section 6A of the Act, the Opponent is not required to prove use for any of the goods or services for which its mark is registered and it is entitled to rely upon the same.

16. Within their counterstatement the Applicant has also commented on the validity of the Opponent’s address for service stating:

¹ Tribunal Practice Notice 4/2009

“TAXLLIA LIMITED is merely utilizing a UK address from overseas, casting doubt on the legitimacy of their local business presence”.

17. An address for service is any address where a party agrees that documents can be served. Under Rule 11(4) of the Trade Mark Rules 2008, the address must be in the United Kingdom, Gibraltar or the Channel Islands. The provision of an address within the specified territories, which may be a residential address, or PO Box satisfies the requirements of Rule 11. In view of this, the address of the applicant; Unit 3 H43 Premier House, Rolfe Street, Smethwick, West Midlands, B66 2AA, satisfies the requirements of rule 11(4) of the Trade Mark Rules 2008.

RELEVANCE OF EU LAW

18. 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

19. Section 5(1) of the Act is as follows:

“5(1) A trade mark shall not be registered if because-A trade mark shall not be registered if it is identical with an earlier trade mark and the goods or services for which the trade mark is applied for are identical with the goods or services for which the earlier trade mark is protected”

20. Section 5(2)(a) of the Act is also being relied upon and is as follows.

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

(a) it is identical with an earlier trade mark and is to be registered for goods or services similar to those for which the 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. 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:

The principles:

- (a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;
- (b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;
- (c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;
- (d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

- (e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;
- (f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;
- (g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;
- (h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;
- (i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;
- (j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;
- (k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically linked undertakings, there is a likelihood of confusion.

Identity of the Marks

22. In *S.A. Société LTJ Diffusion v. Sadas Vertbaudet SA*, Case C-291/00, the Court of Justice of the European Union held that:

“54... a sign is identical with the trade mark where it reproduces, without any modification or addition, all the elements constituting the trade mark or where, viewed as a whole, it contains differences so insignificant that they may go unnoticed by an average consumer.

23. The marks at issue are as follows:

Opponent's Mark	Applicant's Mark
<p data-bbox="331 568 644 613">ilovepackaging</p> <p data-bbox="293 712 683 757">ILOVEPACKAGING</p>	<p data-bbox="938 568 1248 613">ilovepackaging</p>

24. Since the protection conferred by the registration of a word mark applies to the word stated in the application for registration and not to the individual graphic features that the mark might possess (T 254/06, RadioCom, EU:T:2008:165, § 43; LA Superquimica v EUIPO, Case T-24/17, § 39), it is irrelevant whether a word mark is depicted in lower- or upper-case letters, or in a combination thereof in a manner that does not depart from the usual way of writing. As such, I find the Applicant's mark to be identical to both marks in the Opponent's series.

Comparison of goods and services

25. In *Canon*, the Court of Justice of the European Union ("CJEU") stated at paragraph 23 of its judgment:

"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".

26. Guidance on this issue has also come from Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, where he identified the factors for assessing similarity as:

- a) The respective users of the respective goods or services;
- b) The physical nature of the goods or acts of services;
- c) The respective trade channels through which the goods or services reach the market;
- d) 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;
- e) 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.

27. 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 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.”

28. In *Sanco SA v OHIM*, Case T-249/11, the GC indicated that goods and services may be regarded as ‘complementary’ and therefore similar to a degree in circumstances where the nature and purpose of the respective goods and services are very different, i.e. *chicken* against *transport services for chickens*. The purpose of examining whether there is a complementary relationship between goods/services is

to assess whether the relevant public are liable to believe that responsibility for the goods/services lies with the same undertaking or with economically connected undertakings. As Mr Daniel Alexander Q.C. noted as the Appointed Person in *Sandra Amelia Mary Elliot v LRC Holdings Limited* BL-0-255-13:

“It may well be the case that wine glasses are almost always used with wine – and are, on any normal view, complementary in that sense - but it does not follow that wine and glassware are similar goods for trade mark purposes.”

Whilst on the other hand:

“.....it is neither necessary nor sufficient for a finding of similarity that the goods in question must be used together or that they are sold together.”

29. Place General Court (“GC”) confirmed in *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T-133/05, that, even if goods are not worded identically, they can still be considered identical if one term falls within the scope of another (or vice versa):

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

30. For the purposes of considering the issue of similarity of goods or 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).

31. The parties’ respective specifications are shown in Annex 1.

32. Within the Form TM8 and counterstatement, the Applicant admits that the goods within their specification are similar to the Opponent's goods. In CX02 BL O/393/19, Professor Phillip Johnson as Appointed Person stated as follows:

"Once such an admission is made it is deemed to be conclusively proved (a formal admission is sometimes called a "waiver of proof"; Phipson on Evidence (19th Ed), paragraph 4-03). This means neither party can lead to evidence contrary to the admitted fact and, accordingly, a Hearing Officer cannot find a fact contrary to the admission (as doing so is the same as finding facts contrary to the evidence)."

33. As the applicant has not specified what degree of similarity it considers exists between the parties' respective goods and services, I must still undertake a comparison in order to identify the degree of similarity between them.

Glass tableware; Glass bottles; Glass cups; Bowls (Glass -); Glass pots; Insulated glass holders; Plastic bottles; Drinking glass holders; Glass holders; Bathroom glass holder; Plastic cups; Household plastic gloves.

34. The above goods appear in the specification of both the Applicant and the Opponent and as such are identical.

Glass bowls.

35. Albeit worded differently, I find the Applicant's terms above to be identical to the Opponent's *Bowls (Glass -)*.

Glass containers; Glass [receptacles]; Glass flasks [containers]; Glass jars; Glass vials [receptacles]; Disposable aluminum foil containers for household purposes; Disposable aluminium foil containers for household purposes; Glass vases; Baking containers made of glass; Glass cartridges for medication, empty; Industrial packaging containers of glass; Jars (Glass -) [carboys]; Glass jars [carboys]; Glass bulbs [receptacles]; Food preserving jars of glass; Decorative boxes of glass; Plastic bowls [household containers]; Boxes of glass.

36. The above goods are all containers or receptacles. It is my view that these goods would be encompassed by the Opponent's broader term *Containers*. Therefore, I find the goods to be identical in line with the principle set out in *Meric*.

Reusable plastic water bottles sold empty; Reusable stainless steel water bottles sold empty; Reusable stainless steel water bottles; Plastic water bottles [empty]; Plastic Water bottles.

37. The above goods all fall within the Opponent's boarder term *Bottles* and as such are identical in line with the principle set out in *Meric*.

Glass plates; Disposable chopsticks; Table plates (Disposable -); Disposable table plates; Glass dishes.

38. I compare the above goods to the Opponent's *Tableware* which I understand to be the goods used for eating meals at a table. The above terms are all forms of tableware; therefore, I find the goods to be identical in line with the principle set out in *Meric*.

Glass holders for candles.

39. The above goods are encompassed by the Opponent's *Candle holders* and therefore are identical in line with *Meric*.

Glass pans.

40. The above goods are a form of *Cookware* covered by the Opponent's specification and as such are identical in line with the principle set out in *Meric*.

Glass flasks; Glass carafes; Glass decanters.

41. I understand the above goods to be containers used to hold and pour liquids. I find the above goods to be identical to the Opponent's *Jugs* in line with the principle

set out in *Merix*. If, however I am wrong and the above goods are not identical, I consider them to have a very high degree of similarity. The goods share a similar nature and have the same intended purpose, that being the holding and decanting of liquids. The goods share the same users and will be available through the same distribution channels. The goods have a similar method of use and are also in competition as consumers may choose between them for the purpose of holding and decanting liquids.

Glass mugs.

42. I find the above goods to be highly similar to the Opponent's *Coffee cups*. The goods share a similar nature and purpose; with both being a container with a handle for the purpose of consuming hot drinks. The users of the respective goods will overlap and they will be offered through the same trade channels. The goods are also competitive as consumers may choose between them for consuming drinks.

Glass flowerpots.

43. I understand the above goods to be pots made of glass for growing and holding flowers and plants. I compare this term to the Opponent's *Flower baskets*. While the nature of the respective goods differs slightly, they share the same purpose of holding flowers and plants. The goods will overlap in their user and will be offered through the same trade channels, those being garden and home stores or supermarkets, where the goods are likely to be found in close proximity to each other. The goods share a similar method of use and are competitive as consumers may choose between them for fulfilling the same purpose. As such, I consider the goods to be similar to a high degree.

Glass stoppers for bottles; Glass caps; Glass stoppers; Stoppers (Glass -).

44. I understand the above to be goods that fit into or over the top of an opened bottle to preserve the contents. While I note that the Opponent has various bottle related goods within their specification, I compare the above goods to the Opponent's *Bottle Openers*. The goods differ in their nature and purpose, with the Applicant's

being for the resealing of bottles and the Opponent's goods being for the purpose of opening bottles, however I am of the view that there will be an overlap in the user of the respective goods. The goods will also share similar trade channels, those being home stores and supermarkets, where the goods will likely be found in the same aisles. The goods are not competitive, nor are they complementary in the sense that they are indispensable or important for one another to the extent that users would believe that they are derived from the same undertaking. Overall, I consider the goods to be similar to a low to medium degree. For the sake of completeness, I do not consider the above terms to have a greater degree of similarity with any of the Opponent's other goods.

Disposable lids for household containers.

45. When compared to the Opponent's *Reusable silicone food covers* which I understand to be a cover designed to fit over the top of a container in order to protect its contents, I am of the view that there is a significant overlap in their nature and purpose, with the respective goods both being lids or covers for the purpose of covering or sealing containers. The goods are likely to be sought by the same users and offered through the same trade channels. The goods share a similar method of use and are competitive in the sense that consumers may choose between them for fulfilling the same purpose. Overall, I consider the goods to be similar to a high degree.

Glass lids for industrial packaging containers.

46. I compare the above term to the Opponent's *Reusable silicone food covers*. While the goods differ in their component material, I am of the view that they have a similar purpose, with both parties' goods being used to seal or cover a container. The Applicant's goods; being for industrial containers, will likely be sought by business or professional users. I find that there will be some overlap in user with the goods of the Opponent's as *Reusable silicone food covers* may be sought by both the general public and businesses wishing to use them industrial setting. As such here may also be some degree of competition between the goods where consumers may choose between them for the purpose of covering or sealing industrial containers. The goods are not complementary in the sense that they are indispensable or important for one

another to the extent that users would believe that they are derived from the same undertaking. As such, I consider the goods to be similar to a medium to high degree.

Decorative stained glass; Ornamental glass; Glass ornaments; Decorative glass spheres; Stained glass figurines; Figurines of glass; Ornamental glass spheres.

47. The above goods are all forms of ornamental or decorative glass. I compare the above terms to the Opponent's *Toby Jugs* which I understand to be decorative cups or jugs in the shape of a seated person. While the nature of the respective goods differs, I am of the view that there is some overlap in their purpose, with the applicant's goods being used for decorative purposes and the Opponent's goods having a dual purpose of being used to hold and consume liquids and also for decoration and display. As such there may be an overlap in the users of the goods, with both being sought by individuals seeking items to decorate or display in their homes. These consumers may also choose between the goods for the purposes of decoration giving the goods a degree of competitiveness. The goods may be offered through similar trade channels such as home stores, however it is unlikely that they will be found in close proximity to each other within these stores. The goods are not complementary in the sense that they are indispensable or important for one another to the extent that users would believe that they are derived from the same undertaking. Overall, I consider the goods to be similar to a low to medium degree.

Disposable paperboard bakeware.

48. The above goods are forms of bakeware; which I understand to be items used to hold or contain food during baking, made of paperboard. When compared to the Opponent's *baking trays made of aluminium*, there is a clear overlap in the purpose of the goods. The goods are likely to be sought by the same users and offered through the same trade channels, such as supermarkets and kitchen store and their online counterparts. There is also a degree of competition between the goods as consumers may choose between them when seeking goods to contain food while baking. Overall, I consider the goods to be similar to a high degree.

Porous glass; Glass sheets; Enamelled glass; Sheet glass (except glass used in building); Unprocessed glass; Powdered glass for decoration; Polished plate glass; Crude glass; Plate glass for cars; Glass powder; Plate glass [raw material].

49. I can see no obvious similarity between the above goods and the goods contained in the Opponent's specification. In applying the *Treat* criteria I would ordinarily find these goods to be dissimilar. However, as stated above, within their counterstatement the Applicant has admitted that the goods are similar to those of the Opponent. Therefore, I find the goods to be similar to a low degree.

50. In relation to the opposition under section 5(1), it is a requirement that the goods and services be identical as well as the marks, therefore the section 5(1) opposition is successful for the following goods from the applicant's specification:

Glass tableware; Glass bottles; Glass cups; Bowls (Glass -); Glass pots; Insulated glass holders; Plastic bottles; Drinking glass holders; Glass holders; Bathroom glass holder; Plastic cups; Household plastic gloves; Glass bowls; Food Glass containers; Glass [receptacles]; Glass flasks [containers]; Glass jars; Glass vials [receptacles]; Disposable aluminum foil containers for household purposes; Disposable aluminium foil containers for household purposes; Glass vases; Baking containers made of glass; Glass cartridges for medication, empty; Industrial packaging containers of glass; Jars (Glass -) [carboys]; Glass jars [carboys]; Glass bulbs [receptacles]; Food preserving jars of glass; Decorative boxes of glass; Plastic bowls [household containers]; Boxes of glass; Reusable plastic water bottles sold empty; Reusable stainless steel water bottles sold empty; Reusable stainless steel water bottles; Plastic water bottles [empty]; Plastic water bottles; Glass plates; Disposable chopsticks; Table plates (Disposable -); Disposable table plates; Glass dishes. Glass holders for candles; Glass pans.

51. For the remaining goods where I have found some level of similarity, I will now proceed with the global assessment and likelihood of confusion considerations under

the section 5(2)(a) opposition. The goods continuing under the section 5(2)(a) opposition are as follows:

Glass carafes; Glass decanters; Glass mugs; Glass flowerpots; Glass stoppers for bottles; Glass caps; Glass stoppers; Stoppers (Glass -); Disposable lids for household containers; Glass lids for industrial packaging containers; Decorative stained glass; Ornamental glass; Glass ornaments; Decorative glass spheres; Stained glass figurines; Figurines of glass; Ornamental glass spheres; Disposable paperboard bakeware; Porous glass; Glass sheets; Enamelled glass; Sheet glass (except glass used in building); Unprocessed glass; Powdered glass for decoration; Polished plate glass; Crude glass; Plate glass for cars; Glass powder; Plate glass [raw material].

The average consumer and the nature of the purchasing act

52. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods and services. I must then determine the manner in which the goods and services are likely to be selected by the average consumer. 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 relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

53. The average consumer of the goods at issue will be members of the general public. The goods are likely to be encountered on the shelves of a store or the pages of a website, as such the purchasing process will be predominantly visual in nature. I

do not however discount the aural consideration, as it is possible that the average consumer will receive word-of-mouth recommendations or discuss the goods with a sales assistant before making a purchase. The costs of the goods may vary, however, overall, they are relatively inexpensive. The goods will likely be purchased at varying degrees of frequency; for example, *Disposable lids for household containers* are likely to be purchased more frequently than goods such as *Ornamental glass*. The average consumer is likely to be alive to considerations such as cost and the compatibility of the goods with their needs. Overall, I consider that the average consumer will demonstrate a medium level of attention during the purchasing process.

Distinctive character of the earlier mark

54. The distinctive character of a trade mark can be appraised only, first, by reference to the goods and services in respect of which it is registered and, secondly, by reference to the way it is perceived by the relevant public. In *Lloyd Schuhfabrik*, 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).”

55. 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. The opponent has not pleaded that its mark has obtained an enhanced level of distinctiveness through the use made of it, nor has it filed any evidence of use. Therefore, I have only the inherent distinctiveness of the mark to consider.

56. The opponent’s mark “ilovepackaging” has no dictionary meaning but it will, in my view, be understood as a combination of the words “I”, “Love” and “Packaging”. The Earlier mark is therefore a combination of ordinary dictionary words that are neither descriptive nor allusive to the goods and services at hand. I find the earlier mark to be distinctive to a medium degree.

Likelihood of confusion

57. There is no simple formula for determining whether there is a likelihood of confusion. I must make a global assessment of the competing factors (*Sabel* at [22]), keeping in mind the interdependency between them i.e. that a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa (*Canon* at [17]) and considering the various factors from the perspective of the average consumer. In making my assessment, I must bear in mind 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 he has retained in his mind (*Lloyd Schuhfabrik* at [26]).

58. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one trade mark for the other, while indirect confusion is where the

average consumer realises the trade marks are not the same but puts the similarity that exists between the trade marks and the goods and services down to the responsible undertakings being the same or related.

59. In the present case, as is necessary of all claims under section 5(2)(a) the respective marks are identical. I have found the remaining goods to range in similarity from a low degree to identity and that the earlier mark is inherently distinctive to a medium degree. The average consumer will comprise members of the general public who will demonstrate a low to medium level of attention during the selection process; which will be primarily visual. Weighing all of these factors and bearing in mind the interdependency principle, I find that the identity of the marks is such that the average consumer will mistake one mark for the other where they are used on identical or similar goods. Thus, I consider there to be a likelihood of direct confusion.

Conclusion

60. The opposition succeeds in respect of the following goods, subject to any successful appeal against my decision:

Class 21: Glass tableware; Glass bottles; Glass containers; Glass cups; Glass carafes; Glass [receptacles]; Disposable paperboard bakeware; Glass flasks; Glass flasks [containers]; Glass jars; Glass plates; Glass pans; Disposable chopsticks; Glass mugs; Porous glass; Glass vials [receptacles]; Disposable lids for household containers; Reusable plastic water bottles sold empty; Table plates (Disposable -); Disposable table plates; Disposable aluminum foil containers for household purposes; Glass flowerpots; Disposable aluminium foil containers for household purposes; Glass sheets; Glass bowls; Bowls (Glass -); Glass stoppers for bottles; Insulated glass holders; Reusable stainless steel water bottles sold empty; Glass pots; Plastic bottles; Glass decanters; Decorative stained glass; Glass caps; Glass stoppers; Stoppers (Glass -); Glass vases; Drinking glass holders; Ornamental glass; Glass holders; Reusable stainless steel water bottles; Glass ornaments; Enamelled glass; Baking containers made of glass; Plastic water bottles [empty]; Glass lids

for industrial packaging containers; Glass cartridges for medication, empty; Sheet glass (except glass used in building); Industrial packaging containers of glass; Glass dishes; Decorative glass spheres; Unprocessed glass; Jars (Glass -) [carboys]; Glass jars [carboys]; Stained glass figurines; Plastic water bottles; Glass holders for candles; Glass bulbs [receptacles]; Powdered glass for decoration; Food preserving jars of glass; Figurines of glass; Polished plate glass; Decorative boxes of glass; Crude glass; Plastic bowls [household containers]; Boxes of glass; Ornamental glass spheres; Plate glass for cars; Glass powder; Bathroom glass holder; Plastic cups; Plate glass [raw material]; Household plastic gloves.

COSTS

61. The Opponent has been successful and is entitled to a contribution towards its costs. The Opponent submitted a Tribunal Cost Pro Forma on 08 May 2024 setting out the costs incurred in defending these proceedings. These consisted of:

Notice of Opposition:	2 hours
Preparing evidence/written submissions and considering the other side's submissions:	10 hours
Other expenses:	2 hours

62. Where a party is represented, the registrar usually awards costs on a scale published in Tribunal Practice Notice ('TPN') 1 of 2023. As a matter of practice, litigants in person are asked to complete a costs proforma to ensure that the costs awarded do not exceed the amount spent on the proceedings which would undermine the Registrar's contribution-not-compensation practice in awarding costs. The number of hours claimed is not binding and is subject to an assessment of whether the time spent was reasonable in the circumstances of the case.

63. Taking account of this, I consider the following figures to be a fair and reasonable award of costs:

Notice of Opposition:	1 hours
Preparing evidence/written submissions and considering the other side's submissions:	6 hours
Official fee:	£100.00
7 hours @ £19:	£133.00
Total	£233.00

64. I note that the Opponent did not put forward an hourly rate therefore I have calculated the total using the standard rate for unrepresented parties; that being £19 per hour, in line with the Civil Procedure Rules, Part 46. I have multiplied this by the time I consider was reasonably spent on the opposition. I have reduced the amount awarded for the filing of the notice of opposition to 1 hour, an amount which is reasonable considering the Opponent's pleaded grounds in the present case. I have reduced the amount awarded for the preparation of evidence/written submissions and considering the other sides submissions to 6 hours as the submissions filed by both parties were relatively short. No award has been made for the other expenses requested by the Opponent as the Opponent is not able to claim for the time spent consulting a legal representative.

65. I therefore order SAJID HUSAIN BEGUM to pay the sum of £233.00 to TAXILA LIMITED. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 17th day of December 2024

Jacob Robinson
For the Registrar

Annex 1:

Opponent's goods	Applicant's goods
<p>Class 21- Tableware; Coasters (tableware); Ceramic tableware; Scoops [tableware]; Glass tableware; Coffee services [tableware]; Tableware of porcelain; Tea services [tableware]; Oven-to-table tableware; Tableware, cookware and containers; Toby jugs; Jugs; Small jugs; Milk jugs; Beer jugs; Cream jugs; Wine jugs; Syrup jugs; Vacuum jugs (Non-electric -); Jugs of precious metal; Milk jugs; Plastic bottles; Plastic cups; Plastic buckets; Plastic plates; Plastic coasters; Plastic funnels; Plastic plates [dishes]; Plastic water bottles; Plastic bowls [basins]; Plastic bins [dustbins]; Household plastic gloves; Planters of plastic; Tablemats of plastic; Plastic spray nozzles; Plastic place mats; Cups; Glass cups; Coffee cups; Tea cups; Cups (Fruit -); Paper cups; Egg cups; Drinking cups; Draining trays; Litter trays; Butlers' trays; Cake trays; Meal trays; Biodegradable trays; Compostable trays; Cutlery trays; Crumb trays; Trays [household]; Cabarets [trays]; Serving trays; Seed trays; Seed tray inserts; Pizza tray stands; Ice cube trays; Baking trays made of aluminium; Plastics trays for use as litter trays for cats; Draining trays; Litter trays; Plastic</p>	<p>Class 21- Glass tableware; Glass bottles; Glass containers; Glass cups; Glass carafes; Glass [receptacles]; Disposable paperboard bakeware; Glass flasks; Glass flasks [containers]; Glass jars; Glass plates; Glass pans; Disposable chopsticks; Glass mugs; Porous glass; Glass vials [receptacles]; Disposable lids for household containers; Reusable plastic water bottles sold empty; Table plates (Disposable -); Disposable table plates; Disposable aluminum foil containers for household purposes; Glass flowerpots; Disposable aluminium foil containers for household purposes; Glass sheets; Glass bowls; Bowls (Glass -); Glass stoppers for bottles; Insulated glass holders; Reusable stainless steel water bottles sold empty; Glass pots; Plastic bottles; Glass decanters; Decorative stained glass; Glass caps; Glass stoppers; Stoppers (Glass -); Glass vases; Drinking glass holders; Ornamental glass; Glass holders; Reusable stainless steel water bottles; Glass ornaments; Enamelled glass; Baking containers made of glass; Plastic water bottles [empty]; Glass lids for industrial packaging containers; Glass</p>

<p>funnels; Bowls; Bowls (Glass -); Finger bowls; Fruit bowls; Compostable bowls; Shaving bowls; Goldfish bowls; Sugar bowls; Mixing bowls; Plastic bowls [basins]; Japanese rice bowls (chawan); Laundry baskets; Litter baskets; Steamer baskets; Flower baskets; Towel baskets; Waste baskets; Plant baskets; Bread baskets; Mixing spoons; Slotted spoons; Spoon rests; Spoon supports; Serving spoons; Basting spoons; Cutlery trays; Cutlery rests; Pizza peels; Pizza stones; Roller tubes for peeling garlic; Pizza tray stands; Platters; Serving platters; Serving platters of precious metal; Pitchers; Creamer pitchers; Wash basin pitchers; Meat tongs; Serving tongs; Vegetable tongs; Asparagus tongs; Spaghetti tongs; Bread tongs; Sugar tongs; Barbecue tongs; Ice tongs; Salad tongs; Glass pots; Litter trays; Litter bins; Litter baskets; Buckets; Plastic buckets; Paint buckets; Bottle buckets; Ice buckets; Serving ladles; Flat cooking ladles; Bottles; Refrigerating bottles; Perfume bottles; Water bottles; Bottle pourers; Biodegradable bottles; Bottle coolers; Plastic bottles; Vacuum bottles; Reusable bottles; Glass bottles; Bottles (Refrigerating -); Bottle cradles; Bottle brushes; Gourds (Bottle -); Bottle stands; Bottle buckets; Bottle openers; Bottle gourds; Drinking bottles;</p>	<p>cartridges for medication, empty; Sheet glass (except glass used in building); Industrial packaging containers of glass; Glass dishes; Decorative glass spheres; Unprocessed glass; Jars (Glass -) [carboys]; Glass jars [carboys]; Stained glass figurines; Plastic water bottles; Glass holders for candles; Glass bulbs [receptacles]; Powdered glass for decoration; Food preserving jars of glass; Figurines of glass; Polished plate glass; Decorative boxes of glass; Crude glass; Plastic bowls [household containers]; Boxes of glass; Ornamental glass spheres; Plate glass for cars; Glass powder; Bathroom glass holder; Plastic cups; Plate glass [raw material]; Household plastic gloves.</p>
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Household plastic gloves; Gloves for gardening; Piping bags; Bota bags; Pastry bags; Isothermic bags; Cool bags; Food mashers; Vegetable mashers; Potato ricers; Feather-dusters; Dusters; Window dusters; Furniture dusters; Dusters (Furniture -); Feather brooms; Non-electric blind dusters; Disposable duster sleeves for cleaning; Vegetable brushes with peelers; Baking mats; Vinyl place mats; Plastic place mats; Sushi rolling mats; Drip mats for tea; Place mats of plastic; Dinner mats of plastics material; Sponges; Cleaning sponges; Bath sponges; Body sponges; Kitchen sponges; Scouring sponges; Scrub sponges; Squeegee sponges; Sponge holders; Cosmetic sponges; Facial cleansing sponges; Cookery molds; Pastry molds; Cupcake molds; Chocolate molds; Cake molds; Pudding molds; Confectioners' molds; Ice cube molds; Cookery molds [moulds]; Cake molds [moulds]; Molds (Ice cube -); Molds [kitchen utensils]; Scalp scratchers; Itch scratchers; Back scratchers; Reusable silicone food covers; Silicone baking cups; Baking cases of silicone; Kitchen utensils of silicon; Silicone muffin baking liners; Egg separators; Egg yolk separators; Egg separators [kitchen utensils]; Foam toe separates for use in pedicures; Foam toe

separators for use in pedicures; Egg separators, non-electric, for household purposes; Plant holders; Glass holders; Bouquet holders; Cup holders; Toothbrush holders; Pot holders; Shampoo holders; Candle holders; Toothpick holders; Tealight holders; Serviette holders; Towel holders; Napkin holders; Brush holders; Sponge holders; Soap holders; Tablecloth holders; Inflatable drink holders; Floating drink holders; Foam drink holders; Bathroom glass holder; Body cleanser holders; Hand soap holders; Holders for cosmetics; Shaving brush holders; Flower pot holders; Holders for plants; Liquid soap holders; Toilet tissue holders; Holders (Toilet paper -); Table napkin holders; Makeup sponge holders; Holders for towels; Corn cob holders; Toilet brush holders; Place card holders; Toilet roll holders; Candle jars [holders]; Shower gel holders; Kitchen paper holders; Incense stick holders; Menu card holders; Holders for brushes; Drinking glass holders; Holders for toothbrushes; Holders for tumblers; Toilet paper holders; Holders for flowers; Insulated glass holders; Plastic juice box holders; Portable beverage container holders; Holders for shaving brushes; Water closet brush holders; Boot removers; Electric lint removers; Non-

electric lint removers; Battery operated lint removers; Make-up removing appliances; Sandwich boxes; Soap boxes; Candy boxes; Lunch boxes; Lunch-boxes; Picnic boxes; Bento boxes; Boxes (Soap -); Window boxes; Cool boxes; Bread boxes.	
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