

O/1205/25

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. 4112876

IN THE NAME OF HEALTHY FOODS HOUSE LTD
TO REGISTER THE FOLLOWING TRADE MARK:



IN CLASS 43

AND

IN THE MATTER OF FAST TRACK OPPOSITION THERETO

UNDER NO. 600003607

BY

SHILONG LIN

Background and pleadings

1. Healthy Foods House LTD (“the applicant”) applied to register the trade mark shown on the cover page of this decision in the UK on 16 October 2024 (UK trade mark (UKTM) number: UK00004112876). It was accepted and published in the Trade Marks Journal on 10 January 2025 in respect of the following services:

Class 43: Sushi restaurant services; Fast-food restaurant services; Hotel restaurant services; Take-out restaurant services; Bar and restaurant services; Restaurant and bar services; Take-away restaurant services; Restaurant services; Carvery restaurant services; Ramen restaurant services; Salad bars [restaurant services]; Tempura restaurant services; Restaurant reservation services; Restaurants; Carry-out restaurants; Self-service restaurant services; Mobile restaurant services; Grill restaurants; Spanish restaurant services; Reservation of restaurants; Booking of restaurant seats; Serving food and drink for guests in restaurants; Catering in fast-food cafeterias; Serving food and drink in restaurants and bars; Restaurants (Self-service -); Self-service restaurants; Restaurant services for the provision of fast food; Tourist restaurants; Bistro services; Fast food restaurants; Restaurant services incorporating licensed bar facilities; Delicatessens [restaurants]; Providing food and drink for guests in restaurants; Provision of food and drink in restaurants; Providing restaurant services; Eateries; Restaurant information services; Providing food and drink in restaurants and bars; Catering of food and drinks; Food and drink catering for banquets; Food and drink catering; Catering of food and drink; Catering (Food and drink -); Serving food and drink in doughnut shops; Brasserie services; Restaurant services provided by hotels; Reservation and booking services for restaurants and meals; Cafe services; Hotel catering services; Food and drink catering for institutions; Hotel reservations; Agency services for reservation of restaurants; Providing food and drink in bistros; Takeaway food and drink services; Take-away food and drink services; Food and drink catering for cocktail parties; Cocktail lounge buffets; Take-away food services; Takeaway food services; Serving food and drink for guests; Resort hotel services; Making reservations and bookings for restaurants and meals; Serving food and drinks; Providing food and drink in doughnut shops; Catering

for the provision of food and drink; Catering services for company cafeterias; Reservation of hotel accommodation; Hotel reservation services; Café services; Take-away fast food services; Hospitality services [food and drink]; Wine bar services; Hotel accommodation reservation services; Providing reviews of restaurants and bars; Providing hotel and motel services; Pet hotel services; Providing food and drink catering services for exhibition facilities; Guesthouse; Providing room reservation and hotel reservation services; Catering for the provision of food and beverages; Corporate hospitality (provision of food and drink); Beer bar services; Providing food and drink in Internet cafes; Snack bar services; Consultancy services in the field of food and drink catering; Catering services for the provision of food and drink; Tapas bars; Providing reviews of restaurants; Rental of dishes; Club services for the provision of food and drink; Providing food and drink catering services for convention facilities; Coffee bar services; Providing food and drink for guests; Hookah bar services; Hotel room booking services; Hotel accommodation services; Catering; Providing food and drink catering services for fair and exhibition facilities; Self-service cafeteria services; Private members dining club services; Cafeteria services.

2. Shilong Lin (“the opponent”) opposes the trade mark on the basis of Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). This is on the basis of its earlier UK Trade Mark:



UKTM no: UK00003759318

Filed on 25 February 2022 and registered on 27 May 2022. The following services are relied upon in this opposition:

Class 43: Food and drink catering; Catering (Food and drink -); Serving food and drinks; Providing food and drink; Catering of food and drink; Preparation of food and drink; Food and drink preparation services; Hospitality services [food and drink]; Providing of food and drink; Catering of food and drinks; Provision of food and drink; Takeaway food and drink services; Take away food and drink services; Take-away food and drink services; Services for providing food and drink; Food and drink catering for institutions; Serving food and drink for guests; Providing food and drink in bistros; Food and drink catering for banquets; Providing food and drink for guests; Providing food and drink in restaurants and bars; Serving food and drink in restaurants and bars; Provision of food and drink in restaurants; Arranging of wedding receptions [food and drink]; Food and drink catering for cocktail parties; Serving food and drink in Internet cafes; Providing food and drink in doughnut shops; Corporate hospitality (provision of food and drink); Serving food and drink in doughnut shops; Providing food and drink in Internet cafes; Food reviewing services [provision of information about food and drinks]; food reviewing services [provision of information about food and drinks]; Services for the preparation of food and drink; Catering for the provision of food and drink.

3. The opponent argues as follows:

“This trademark Application Number:UK00004112876, and my Trade mark number:UK00003759318, uses the same English YEYE, Chinese "肖爷", and similar characters and noodle design elements, and will also be used for the restaurant.”

4. The applicant filed a counterstatement denying the claims made and submitting as follows:

“The applicant denies all grounds of opposition set out by the opponent. The trade mark applied for is sufficiently different from the opponent’s mark in appearance, sound, meaning and overall impression. The trade mark design is

original and is based on the owner's image and the nature of the company's business. There is no likelihood of confusion between the applicant's trade mark and the opponent's mark"

5. In accordance with section 6 of the Act, the mark relied upon by the opponent is considered an earlier mark. The mark had not been registered for five years as at the date of application for the contested mark and so, in accordance with section 6A of the Act, it is not subject to proof of use; the opponent may rely upon all the services of its registration.

6. 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."

7. 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.

Representation

8. Both parties are self-represented. Neither party filed evidence or submissions beyond those filed in their respective pleadings (as set out in full above). This decision is taken following a careful consideration of the papers.

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 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)

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

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

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark”.

11. Section 5A of the Act states as follows:

“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.”

Relevant law

12. The following principles are gleaned from the decisions of the Court of Justice of the European Union (“CJEU”) 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 C120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P.

The principles

- (a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;
- (b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;
- (c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;
- (d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;
- (e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;
- (f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;
- (g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;
- (h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;
- (i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

- (j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;
- (k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of services

13. The competing services are shown in paragraphs one and two.

14. In the judgment of the Court of Justice of the European Union in *Canon*, Case C-39/97, the court stated at paragraph 23 of its judgment 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.”

15. 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 services;
- (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.

16. 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 and services. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06, the General Court 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. In *Sanco SA v OHIM*, Case T-249/11, the General Court 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 Amalia Mary Elliot v LRC Holdings Limited* BL O/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.”

18. In *YouView Ltd v Total Ltd* [2012] EWHC 3158 (Ch) at [12] Floyd J stated:

“...Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless the principle should not be taken too far. Treat was decided the way it was because the ordinary and natural, or core, meaning of ‘dessert sauce’ did not include jam, or because the ordinary and natural description of jam was not ‘a dessert sauce’. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question.”

19. I bear in mind that it is permissible to group the services together for the purposes of assessment¹.

Class 43

Sushi restaurant services; Fast-food restaurant services; Hotel restaurant services; Take-out restaurant services; Bar and restaurant services; Restaurant and bar services; Take-away restaurant services; Restaurant services; Carvery restaurant services; Ramen restaurant services; Salad bars [restaurant services]; Tempura restaurant services; Restaurants; Carry-out restaurants; Self-service restaurant services; Mobile restaurant services; Grill restaurants; Spanish restaurant services; Restaurants (Self-service -); Restaurant services for the provision of fast food; Self-service restaurants; Tourist restaurants; Bistro services; Fast food restaurants;

¹ *Separode Trade Mark* BL O-399-10

Restaurant services incorporating licensed bar facilities; Delicatessens [restaurants]; Providing food and drink for guests in restaurants; Provision of food and drink in restaurants; Providing restaurant services; Eateries; Providing food and drink in restaurants and bars; Brasserie services; Restaurant services provided by hotels; Serving food and drink in restaurants and bars; Hookah bar services; Wine bar services; Beer bar services; Snack bar services; Tapas bars; Cafe services; Café services; Hospitality services [food and drink]; Club services for the provision of food and drink; Coffee bar services; Providing food and drink for guests; Club services for the provision of food and drink; Coffee bar services; Self-service cafeteria services; Private members dining club services; Cafeteria services; Serving food and drink for guests in restaurants; Serving food and drink in doughnut shops; Providing food and drink in Internet cafes; Cocktail lounge buffets; Takeaway food and drink services; Take-away food and drink services; Take-away food services; Takeaway food services; Serving food and drink for guests; Take-away fast food services;

20. The applicant's terms all relate to the provision of food/drink as well as bars, take away and restaurant services. The opponent's specification includes the term *Catering (Food and drink -)*. I find this to be a wider term than those in the applicant's specification and therefore find them identical on the principles outlined in *Meric*. If I am wrong about that, I consider that the term, catering, relates to the activity of providing food and drink. Therefore, I find that the nature and purpose of the services will overlap, as will uses. Trade channels will also overlap. I consider that the services will also share users. There will be competition between them, however, I do not find complementarity. In light of this, I find that there is a high degree of similarity between the respective services.

Restaurant reservation services; Booking of restaurant seats; Reservation and booking services for restaurants and meals; Agency services for reservation of restaurants; Making reservations and bookings for restaurants and meals; Reservation of restaurants;

21. The above services are not identical to the opponent's *-serving food and drink in restaurants and bars* or *provision of food and drink in restaurants* in its specification, as they do not overlap in nature. That being said, I find these services are likely to be offered by the same trade channels and they are complementary in the sense that the

opponent's services are indispensable or important to the applicant's reservation services, and the consumer will believe they may be offered by the same undertaking. The intended user will also be shared, namely members of the general public. I acknowledge that there may be some entities that offer only restaurant reservation, and not the restaurant services themselves, however, I consider that the average consumer is likely to believe that these services are carried out by a shared undertaking. Lastly, I do not consider that the services are in competition. Taking all of this into account, I find that these are similar to a medium degree.

Restaurant information services;

22. In the absence of submissions, I consider restaurant information services to be used to assist restaurant owners in overseeing all aspects of their business, and would include things such as inventory tracking, staff scheduling, stock management and management of finances etc. The opponent's specification includes *provision of food and drink in restaurants*. I consider that there would be an overlap between these services. There would be an overlap in use, for example, the provision of food and drink would require inventory tracking and stock management, although I do not find an overlap in purpose. There will also be some overlap in users and trade channels may also be shared. I do not find competition, but there will be complementarity, as one is indispensable to the other and the consumer will believe they may be offered by the same undertaking². I find that these services are similar to a medium degree.

Guesthouse; Resort hotel services; Hotel accommodation services; Hotel reservations; Reservation of hotel accommodation; Hotel reservation services; Hotel accommodation reservation services; Providing room reservation and hotel reservation services; Providing hotel and motel services; Hotel room booking services;

23. In the absence of submissions, I consider that the applicant's services include a wide range of offerings such as providing temporary accommodation, dining and personal assistance. I note that the opponent's specification includes the term *hospitality services [food and drink]* as well as *catering for the provision of food and drink*. I consider that hospitality services refer to a wide range of activities, however,

² *Everest Dairies Limited v Everest Food Products Private Limited*, [23] O/0107/23.

in this instance I would consider the opponent's term to refer to the provision of food and drink. Although the nature and purpose of the respective services is not the same (the applicant's services being for the primary purpose of providing temporary accommodation and the opponent's being for the purpose of providing food and drink), the respective users may overlap. It is not uncommon for hotels to have restaurants on their premises which are available for their customers/other members of the public to use, and as such I find that trade channels may overlap. I do not find competition due to the purpose of the services differing, neither do I find complementarity as I do not consider that one is important or indispensable to the other. Overall, I find a medium degree of similarity between these services.

Pet hotel services;

24. In the absence of submissions, I consider that pet hotel services are a dedicated boarding facility designed to provide pets, particularly dogs and cats, with a luxurious and comfortable environment while their owners are away. These facilities will usually offer nutritious meal options tailored to each pet's dietary needs. The opponent's specification includes the term *providing food and drink*, which I consider to be a wide term and would encompass some of the services provided within a pet hotel. Therefore, whilst the purpose of the services may differ, there may be an overlap in uses and users. Trade channels are unlikely to overlap. There will not be competition or complementarity. Overall, I find between a low to medium degree of similarity between these services.

Catering in fast-food cafeterias; Catering of food and drinks; Food and drink catering for banquets; Food and drink catering; Catering of food and drink; Catering (Food and drink -); Hotel catering services; Food and drink catering for institutions; Providing food and drink in bistros; Food and drink catering for cocktail parties; Serving food and drinks; Providing food and drink in doughnut shops; Catering for the provision of food and drink; Catering services for company cafeterias; Providing food and drink catering services for exhibition facilities; Catering for the provision of food and beverages; Corporate hospitality (provision of food and drink); Catering services for the provision of food and drink; Providing food and drink catering services for convention facilities; Catering; Providing food and drink catering services for fair and exhibition facilities;

25. The opponent's specification includes the term *Catering (Food and drink -)*. This is self-evidently identical to the same term in the applicant's specification. The applicant's specification also includes the term *catering at large* and therefore encompasses the opponent's specification, making the applicant's terms identical on the principles outlined in *Meric*.

Providing reviews of restaurants and bars; Providing reviews of restaurants;

26. The opponent's specification includes the term *food reviewing services [provision of information about food and drinks]*. I consider this to be a wide-ranging term which would encompass the above terms in the applicant's specification and therefore they are identical on the principles outlined in *Meric*.

Rental of dishes;

27. The opponent's specification includes the terms *Hospitality services [food and drink]* and *Catering (Food and drink -)*. Whilst the nature and purpose of the respective services is not the same (the applicant's services being for the rental of dishes and the opponent's being for the purpose of providing food and drink), the respective users may overlap, as it is foreseeable that someone who wishes to hire a caterer may also wish to rent dishes for an event, such as a wedding. Trade channels are likely to overlap. I do not find competition due to the purpose of the services differing. Whilst I accept that rental of dishes and catering services may be used in combination, I do not think that this gives rise to a complementary relationship between them in accordance with the caselaw. As Ms Emma Himsworth stated³, "the question of whether goods are 'complementary' is to be distinguished from use in combination, where goods are merely used together, whether for choice or convenience"⁴. Overall, I find a medium degree of similarity between these services.

Consultancy services in the field of food and drink catering;

28. The opponent's specification includes the term *Catering (Food and drink -)*. The applicant's term may share the same users as catering and hospitality services, as if

³ Sitting as the Appointed Person in *Everest Dairies Limited v Everest Food Products Private Limited*, [23] O/0107/23.

⁴ Although this refers to goods, it is equally applicable to services

one is planning a wedding using a hospitality or a catering service, advice would be an aspect of the service which one would expect to receive. As a result of this, the services may also share the same purpose and use to some degree. There will be an overlap in trade channels, although I do not find competition. An alternative might be that consultancy and advice is provided to a food/drink establishment rather than its customers, in which case the uses may overlap but users would differ and channels of trade would be different. Allowing for both, I conclude that there is a medium degree of similarity between the services.

Average consumer and the purchasing act

29. 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.

30. 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.”

31. The services are available to both the general public and professional consumers (consultancy services aimed at businesses, for example). The frequency of the associated purchase is likely to vary depending on the services being purchased. The associated cost is likely to vary considerably, from cheaper items, such as fast food, to high-end restaurants and catering services. The services will be selected after viewing information on signage on the high street, in promotional materials, on the

internet or after receiving word-of-mouth recommendations. Therefore, the purchasing process is likely to be primarily visual, however, I do not discount an aural component.

32. When purchasing the services, the average consumer is likely to consider the range of food and drink on offer, dietary requirements and reviews. In my view, the average consumer is likely to demonstrate a medium level of attention during the purchasing process



Comparison of marks

33. 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 Court of Justice of the European Union 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.”

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

35. The respective trade marks are shown below:

Earlier trade mark	Contested trade mark
	

36. Neither of the parties have made any submissions as to the similarity of the marks and I will therefore draw my own conclusions.

Overall impression

37. The earlier mark is a figurative mark which contains a number of elements. The mark is presented as a roundel. In the centre of the mark is a chef who has his thumbs up and in front of him is a bowl of noodles. On either side of the chef, and on the bowl, there are Chinese characters in white/black. These are set against a brown circular background. The inner circle is framed by another white circle, and curved above the device are the words 'YEYE's Noodle & Dumpling' in brown. Finally, there is an additional brown circle around this. The font used throughout the device is stylised but is not particularly distinctive or remarkable.

38. Both the device and the words 'YEYE'S Noodle & Dumpling' contribute to the overall impression of the mark, however, the words play the greater role given their size and the fact that the eye is drawn to the elements of a mark that can be read. The picture in the centre of the device plays a slightly lesser role. I have no submissions in respect of the Chinese characters in the device, and whilst some Chinese speaking consumers will understand the meaning of these characters, I do not consider that the number of Chinese language speakers in the population of UK consumers would be significant enough to give any weight to. As such, I consider that the Chinese

characters play a much lesser role in the overall impression of the mark. I find that the words 'Noodle & Dumpling' will be considered descriptive of the services on offer.

39. The contested mark is a circular figurative device with a solid cream background. In the centre of the device is the figure of a man in white/brown. Underneath the figure are two pairs of black chopsticks, each facing towards the centre of the mark, one pair is holding noodles, and the other pair is holding a dumpling. In between the chopsticks are two Chinese characters in yellow, and below that are the words 'since 2017' in a small plain font. At the bottom centre of the mark is the word YE YE in yellow. YE YE appears in a much larger font

40. The words YE YE play the greater role in the overall impression, due to their size and the fact that they can be read. The device plays a slightly lesser role, as the eye is drawn to the elements of a mark that can be read. The words 'Since 2017' simply indicate a date, and as per my findings above, the Chinese characters will not be understood by the majority of average consumers and as such both will play only weak roles in the overall impression of the mark.

Visual impression

41. Visually, both marks feature the words YEYE'S / YE YE which I have found to be more prominent due to their size and position. I do not consider that the space between the words YE YE in the contested mark makes a difference to the word, as I think that the average consumer is unlikely to recall whether there is a gap or not. Both words/letters are presented in a circular device and feature a male figure in the centre, with food below. Both marks also feature Chinese characters. The marks are presented in different colours and the device elements differ stylistically, with the contested mark featuring a more modern design, against the earlier mark which appears to be more traditional. There are also differences within the images of the male figures, for example, one has glasses whereas the other wears a hat, however, I do not consider that the precise details will have a lasting effect, or that the consumer would engage in a detailed analysis of each element of the mark. In my view, they are visually similar to a medium degree.

Aural impression

42. No consideration will be given to the stylisation or devices when the marks are pronounced. The earlier mark comprises of the words 'YEYE'S Noodle & Dumpling', whereas the contested mark comprises of the words YE YE. I consider that YE YE is either likely to be pronounced as YEE-YEE or YAY-YAY, and although I note that there is a space between the words in the contested mark, I consider that this will be pronounced virtually identically, save for the fact that the applicant's mark bears the possessive version of the word.

43. The words 'Noodle & Dumpling' in the applicant's mark are a point of aural difference. I consider that this element of the mark may not be pronounced due to being descriptive in nature. In instances where 'Noodle & Dumpling' are pronounced, I find the marks to be aurally similar to a medium degree, whereas if they are not pronounced, I find them to be similar to a high degree.

Conceptual comparison

44. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer. This is highlighted in numerous judgments of the GC and the CJEU including *Ruiz Picasso v OHIM*⁵. The assessment must be made from the point of view of the average consumer.

45. Conceptually, the marks will both be understood to be belonging to a company which sells Asian food products due to the images in the devices, and the use of Chinese characters in both. This is reinforced by the words 'Noodle & Dumpling' in the earlier mark which will be considered descriptive of the services on offer. YE YE / YEYE's will have no meaning to the average consumer, however, due to the other elements of the marks, it is likely to be understood as being the entity responsible for the services. Therefore, in my view, the marks are conceptually highly similar with the element YEYE/YEYE's being virtually identical.

⁵ [2006] e.c.r.-I-643; [2006] E.T.M.R. 29

Distinctive character of the earlier trade mark

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 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).”

47. The opponent has not filed evidence of use and, consequently, I have only the inherent position to consider. The opponent’s mark consists of a roundel device bearing the words ‘YEYE’s Noodle & Dumpling’. YEYE will have no meaning to the average consumer, however, as set out above, due to the other elements of the mark, it is likely to be understood as being the entity responsible for the services. The words ‘Noodle & Dumpling’ in the mark will be considered descriptive for the reasons set out above. Consequently, I consider the mark to have a medium level of distinctiveness as a whole, however, as the common element YEYE has no meaning, this element of the mark is distinctive to a high degree.

Conclusions on Likelihood of Confusion

48. 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 services down to the responsible undertakings being the same or related.

49. 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 services and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the opponent's trade mark, the average consumer for the services 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. I have found as follows:

- That the services at issue range from being identical to similar to between a low to medium degree;
- I have identified that the average consumer will be members of the general public or professionals. They will select the services primarily by visual means, although I do not discount an aural component;
- I have concluded that a medium degree of attention will be paid during the purchasing process;
- The contested mark is visually similar to the earlier mark to a medium degree;
- The contested mark is aurally similar to the earlier mark to between a medium and high degree;

- I have found the contested mark and the earlier mark to be conceptually highly similar with the YE YE/YEYE'S element being conceptually virtually identical;
- I have found the earlier mark overall to be inherently distinctive to a medium degree and the common element, YEYE's, to be distinctive to a high degree;

51. Both marks feature the word/s YEYE's / YE YE, and although these differ slightly (there being a space in one and the other being possessive) I consider that these differences will be incorrectly recalled and will be misremembered by the average consumer. The marks are presented in a circular figurative device, and both marks depict a male character and Asian food, and whilst there are differences between these depictions, I do not consider that these will be remembered, especially as consumers will not compare the marks side by side. Both marks include the use of Chinese characters, however, I do not consider that the number of Chinese language speakers in the population of UK consumers would be significant enough to take these elements into account sufficient to distinguish between the marks. I find that the words 'Noodle & Dumpling' in the earlier mark will be considered descriptive of the services on offer and will therefore be given less weight than the other elements of the mark⁶.

52. Given the similarities between the marks, I consider that the consumer will misremember that the devices are stylistically different and will instead rely upon the imperfect picture of them retained in its mind. When considering the contested mark in relation to the services that I find identical or similar to varying degrees, I am satisfied that there is sufficient similarity for the marks to be mistaken for one another, particularly with the YEYE element being identical, even for those services that I found to be similar only to a low degree due to the interdependency principle, and as such I find that a likelihood of confusion would apply. As a result, taking all the above into account in the global assessment, I consider that there exists a likelihood of direct confusion. In case I am wrong about that, I will go on to consider indirect confusion.

53. In *L.A. Sugar Limited v By Back Beat Inc*, BL O/375/10, Mr Iain Purvis Q.C., as the Appointed Person, explained that:

⁶ *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97

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

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

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

54. These three categories are not exhaustive; rather, they were intended to be illustrative of the general approach, as has been confirmed by the Court of Appeal⁷. I recognise that a finding of indirect confusion should not be made merely because the

⁷ *Liverpool Gin Distillery and others v Sazerac Brands, LLC and others* [2021] EWCA Civ 1207

competing marks share a common element. The Court of Appeal has also emphasised that, where there is no direct confusion, there must be a “proper basis” for finding indirect confusion.

55. When assessing indirect confusion, I have found that the common elements, including the shape of the mark, the fact that both marks use YEYE’s / YE YE and the depiction of Asian food / a male figure (albeit that the details of each differ) convey a highly similar conceptual message and that the differences in those elements are likely to be mistakenly recalled or misremembered as each other. However, if these differences are noted by the average consumer when considering the contested mark, and taking account of the common elements in the context of the mark as a whole, the element YE YE/YEYE’s is likely to be mistakenly recalled one for the other and the consumer is likely to conclude that the differences with the other elements of the contested mark is a rebrand by the owner of the earlier mark. As a result of this, I find a likelihood of indirect confusion.

Conclusion

56. The opposition has succeeded in its entirety under section 5(2)(b).

COSTS

57. As the opponent has been successful in opposing the application it is entitled to a contribution towards its costs. The opponent, being unrepresented, was invited by the tribunal to indicate whether it intended to make a request for an award of costs, including providing accurate estimates of the number of hours spent on a range of given activities relating to the prosecution of the proceedings. It was made clear by letter dated 6 May 2025 that if the pro-forma was not completed, no costs arising from the action would be awarded. As the opponent has not provided such information, I therefore make no award as a contribution towards costs of the proceedings, other than to award the opposition fee of £100.

58. I therefore order Healthy Foods House LTD to pay Shilong Lin the sum of £100. 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 22nd day of December 2025

LA Bailey

For the Registrar