

**O/1135/22**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO. UK00003652085**

**BY ROADGET BUSINESS PTE. LTD**

**TO REGISTER THE FOLLOWING MARK  
(SERIES OF TWO):**

**SlowSunday**

**SLOW SUNDAY**

**IN CLASS 3**

**IN THE MATTER OF OPPOSITION THERETO**

**UNDER NO. OP000428824**

**BY AMELIA KNIGHT LIMITED**

## Background and pleadings

1. On 7 June 2021, Roadget Business Pte. Ltd (“the applicant”) applied to register the trade mark shown below (a series of two) and the application was published for opposition purposes on 6 August 2021.

SlowSunday

SLOW SUNDAY

2. The registration is sought for the following goods:

Class 3      Cosmetics; toiletry preparations; make-up powder; cosmetic creams; beauty masks; cosmetic kits; make-up preparations; eyeshadow; eyebrow cosmetics; eyebrow pencils; mascara; cosmetic pencils; lipsticks; lip glosses; lipstick cases; make-up removing preparations; cleaning preparations; cleaner for cosmetic brushes; adhesives for cosmetic purposes; cotton sticks for cosmetic purposes; dentifrices; false eyelashes; false nails; nail varnish; nail care preparations; emery; hair dyes; hair straightening preparations; oils for cosmetic purposes; perfumes; essential oils; fragrances; skin whitening creams; sunscreen preparations; after-sun lotions; sun-tanning preparations; shoe polish.

3. Amelia Knight Limited (“the opponent”) opposes the trade mark on the basis of section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opposition is directed against all of the goods in the application. It is reliant upon the trade mark and the goods detailed below.
4. UK00918051048, filed on 12 April 2019 and registered on 5 September 2019.

# SOAK SUNDAY

Class 3      Cosmetics and cosmetic preparations; cosmetic box sets; eye, eyebrow, hair and face cosmetics; decorative and colour cosmetics; beauty care cosmetics; make-up; make-up foundation, primers and removers; nailcare preparations; nail polish and varnish; nail tips; skincare preparations; face care preparations; soaps; perfumery, essential oils, hair lotions; hair care preparations; bath preparations; body cleaning and beauty care preparations; body washes, lotions and shampoos.

5. In its Form TM7 and statement of grounds, the opponent argues that the respective goods are identical or similar and that the marks are similar.
6. The applicant filed a Form TM8 and a counterstatement denying the claims made.
7. Both parties filed written submissions in lieu of a hearing.
8. The applicant is represented by Harbottle & Lewis LLP, while the opponent is represented by HGF Limited.

## **DECISION**

9. Section 5(2)(b) of the Act reads as follows:

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

(a)...

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

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

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

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

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

...

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

11. Given its filing date, the trade mark upon which the opponent relies qualifies as an earlier mark as defined above. As it had not been registered for five years or more before the filing date of the application, the opponent’s mark is not subject to the use requirements specified within section 6A of the Act.

### **Section 5(2)(b) – case law**

12. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Trade Marks Act relied on in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case-law of EU courts.

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

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

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

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

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

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

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

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

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

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

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

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

### **Comparison of the trade marks**

14. 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 (“CJEU”) stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

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

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

16. The opponent’s and the applicant’s marks are shown below:

Opponent’s trade mark	Applicant’s trade mark
SOAK SUNDAY	SlowSunday SLOW SUNDAY

17. The opponent’s word mark is the plain words “SOAK SUNDAY”. “SOAK” is the slightly more dominant of the two words in the overall impression formed by the mark given that it is placed at the beginning of the mark and it is recognised that the beginning of a mark is usually more focused upon.

18. The applicant’s mark is a series of two, the plain words “SlowSunday” – two words run together – and “SLOW SUNDAY”. Again, the first word, “Slow”/“SLOW”, is the slightly more dominant of the two words in the overall

impression formed by the mark given that it is placed at the beginning of the mark and it is recognised that the beginning of a mark is usually more focused upon.

19. Visually, the marks share an identical second word. The first words of each mark are four letters long and both begin with the letter “S”. It is well established case law that word marks can be rendered in a variety of formats, so the opponent’s mark could be rendered in the same format as that of the first in the series of two of the applicant’s marks. I consider the respective marks to be of medium similarity visually.
20. Aurally, the second words of each mark are identical. The respective first words are “SOKE/SLOW”, hence they share a beginning “S” sound. I find the respective marks to be of medium similarity aurally.
21. Conceptually, “SOAK SUNDAY” brings to mind a soak in the bath on a Sunday, Sunday traditionally being a day of rest. “SlowSunday” brings to mind a leisurely Sunday, Sunday traditionally being a day of rest. I find the respective marks to be highly similar conceptually.

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

22. 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).”

23. 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, to those with high inherent distinctive character, such as invented words which have no allusive qualities.

24. “SOAK SUNDAY” consists of two dictionary words. The phrase has associations with soaking in the bath and being at leisure, is allusive of the opponent’s “bath preparations” and I find the mark to be of low inherent distinctive character for these goods. For the remaining goods, the mark is of medium inherent distinctive character.

### **Comparison of the goods**

25. When making the comparison, all relevant factors relating to the goods in the specifications should be taken into account. In the judgment of the CJEU *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.”

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 uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;
- (d) The respective trade channels through which the goods or services reach the market;
- (e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be found in supermarkets and, in particular, whether they are or are likely to be found on the same or different shelves;
- (f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance, whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

27. In *YouView TV Ltd v Total Ltd*, [2012] EWHC 3158 (Ch), Floyd J. (as he then was) stated that:

“... 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."

28. In *Sky v Skykick* [2020] EWHC 990 (Ch), Lord Justice Arnold considered the validity of trade marks registered for, amongst many other things, the general term 'computer software'. In the course of his judgment he set out the following summary of the correct approach to interpreting broad and/or vague terms:

"...the applicable principles of interpretation are as follows:

(1) General terms are to be interpreted as covering the goods or services clearly covered by the literal meaning of the terms, and not other goods or services.

(2) In the case of services, the terms used should not be interpreted widely, but confined to the core of the possible meanings attributable to the terms.

(3) An unclear or imprecise term should be narrowly interpreted as extending only to such goods or services as it clearly covers.

(4) A term which cannot be interpreted is to be disregarded."

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

"29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut für*

*Lernsysteme v OHIM – Educational Services* (ELS) [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark.”

30. 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 OHIM* (Trade Marks and Designs), Case T-325/06, the GC stated that “complementary” means:

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

31. 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.”

While 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.”

32. The contested Class 3 goods are as follows:

<b>Opponent's goods</b>	<b>Applicant's goods</b>
Cosmetics and cosmetic preparations; cosmetic box sets; eye, eyebrow, hair and face cosmetics; decorative and colour cosmetics; beauty care cosmetics; make-up; make-up foundation, primers and removers; nailcare preparations; nail polish and varnish; nail tips; skincare preparations; face care preparations; soaps; perfumery, essential oils, hair lotions; hair care preparations; bath preparations; body cleaning and beauty care preparations; body washes, lotions and shampoos.	Cosmetics; toiletry preparations; make-up powder; cosmetic creams; beauty masks; cosmetic kits; make-up preparations; eyeshadow; eyebrow cosmetics; eyebrow pencils; mascara; cosmetic pencils; lipsticks; lip glosses; lipstick cases; make-up removing preparations; cleaning preparations; cleaner for cosmetic brushes; adhesives for cosmetic purposes; cotton sticks for cosmetic purposes; dentifrices; false eyelashes; false nails; nail varnish; nail care preparations; emery; hair dyes; hair straightening preparations; oils for cosmetic purposes; perfumes; essential oils; fragrances; skin whitening creams; sunscreen preparations; after-sun lotions; sun-tanning preparations; shoe polish.

33. The applicant's "cosmetics" is identical to the opponent's "cosmetics and cosmetic preparations".

34. The applicant's "nail varnish" is identical to the opponent's "nail polish and varnish".

35. The applicant's "nail care preparations" are identical to the opponent's "nailcare preparations".
36. The applicant's "perfumes" and "fragrances" are identical to the opponent's "perfumery ...".
37. The applicant's "essential oils" are identical to the opponent's "... essential oils ...".
38. The applicant's "make-up removing preparations" are identical to the opponent's "make-up ... removers".
39. The applicant's "make-up powder", "cosmetic creams", "cosmetic kits", "make-up preparations", "eyeshadow", "eyebrow cosmetics", "eyebrow pencils", "mascara", "cosmetic pencils", "lipsticks", "lip glosses", "adhesives for cosmetic purposes", "cotton sticks for cosmetic purposes", "oils for cosmetic purposes", "skin whitening creams", and "sun-tanning preparations" are *Meric* identical to the opponent's "cosmetics and cosmetic preparations" in that the goods designated by the trade mark application are included in a more general category designated by the earlier mark.
40. In respect of the applicant's "toiletry preparations", toiletries are defined by the Collins online dictionary as "things that you use when washing or taking care of your body, for example soap and toothpaste". Consequently, I find the applicant's goods to be *Meric* identical to the opponent's "soaps" in that the goods designated by the earlier mark are included in a more general category designated by the trade mark application.
41. The applicant's "false nails" are *Meric* identical to the opponent's "nail tips" in that the goods designated by the earlier mark are included in a more general category designated by the trade mark application.
42. The applicant's "hair dyes" and "hair straightening preparations" are *Meric* identical to the opponent's "hair care preparations" in that the goods

designated by the trade mark application are included in a more general category designated by the earlier mark.

43. The applicant's "beauty masks", "sunscreen preparations" and "after-sun lotions" are *Meric* identical to the opponent's "skincare preparations" in that the goods designated by the trade mark application are included in a more general category designated by the earlier mark.

44. The applicant's "false eyelashes" are *Meric* identical to the opponent's "eye ... cosmetics" in that the goods designated by the trade mark application are included in a more general category designated by the earlier mark.

45. The applicant's "cleaning preparations" are *Meric* identical to the opponent's "soaps" in that the goods designated by the earlier mark are included in a more general category designated by the trade mark application.

46. I compare the applicant's "cleaner for cosmetic brushes" with the opponent's "Cosmetics and cosmetic preparations". The former has the purpose of cleaning brushes that are used to apply cosmetics, while the latter are cosmetics themselves. Both sets of goods would be sold through the same trade channels – chemists and supermarkets – and they would be sold close to each other in those establishments. The users would be the same – members of the general public who use cosmetics. The respective goods are not strictly speaking complementary, as brush cleaner is at one remove from a brush, nor are they in competition. I find the goods to be of medium similarity.

47. I compare the applicant's "emery" with the opponent's "nailcare preparations". The former is a material used in filing nails, while the latter are preparations for the care of nails. Both sets of goods would be sold through the same trade channels – chemists and supermarkets – and they would be sold together in those establishments. The users would be the same – members of the general public who care for their nails. The respective goods are not

strictly speaking complementary, but both are used on nails. They are not in competition. I find the goods to be of medium similarity.

48. I compare the applicant's "lipstick cases" with the opponent's "cosmetics ...". The former is a case for a particular type of cosmetic, while the latter are cosmetics themselves. Both sets of goods would be sold through the same trade channels – chemists and supermarkets and they would be sold close to each other in those establishments. The users would be the same – members of the general public who use cosmetics. The respective goods are not in competition, but they are complementary. I find them to be of medium similarity.

49. I compare the applicant's "shoe polish" with the opponent's "soaps". Both are cleaning agents, but shoe polish is specifically for cleaning shoes, whereas soap has a variety of purposes in cleaning the body and in household cleaning. Both would be used by members of the public. In terms of trade channels, shoe polish would be found in a hardware shop or the cleaning aisle of a supermarket. Soap could also be found in these places as well as a chemist's or the beauty aisle of a supermarket. The goods are not complementary, nor are they in competition. I find the respective goods to be of medium similarity.

50. I compare the applicant's "dentifrices" with the opponent's "cosmetics and cosmetic preparations". While some tooth pastes may contain whitening effects for cosmetic impact, the purpose of dentifrices is to clean teeth. The users and trade channels may overlap but only on a superficial level. They are not in competition with one another. I find these goods to be dissimilar.

51. As some degree of similarity between the services is required for there to be a likelihood of confusion<sup>1</sup>, the opposition must fail in respect of the following goods in the applicant's specification:

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<sup>1</sup> *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA



### **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. I must then determine the manner in which the goods 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. For the respective goods (cosmetics, toiletries, and cleaning materials), the average consumer will be a member of the general public. The prices for such items will generally be in low to mid-range and will not require extensive deliberation. However, they are usually more than just impulse buys. Overall, I assess the goods as requiring a medium level of attention during the purchasing process.

54. Given that the goods in question will normally be picked up directly from the shelves, visual factors will predominate during the purchasing process. However, I do not discount aural considerations completely.

## Likelihood of confusion

55. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and vice versa. 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 goods and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

56. I have found the respective marks to be of medium similarity visually and aurally, and highly similar conceptually.

57. I have found the respective goods to be identical (or at least highly similar if they are not identical), of medium similarity, or dissimilar. The average consumer will pay a medium level of attention during the purchasing process, with visual factors predominating. The earlier mark is of a low level of inherent distinctiveness for the opponent's "bath preparations" and of a medium level for the rest of its goods.

58. The respective marks have an identical word in common – "SUNDAY" – as their second words. The first words – "SOAK"/"Slow" are each of four letters, beginning with the letter "S". However, the remaining three letters are different (at least in the order in which they appear). The average consumer

would notice this difference and would not mis-recall the words “SOAK” and “Slow” so as to confuse the two marks. As such, I do not consider that there would be a likelihood of direct confusion in this case.

59. It now falls to me to consider the likelihood of indirect confusion. Indirect confusion was described in the following terms by Iain Purvis Q.C., sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10:

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

60. The two respective phrases, “SOAK SUNDAY” and “SlowSunday”/“SLOW SUNDAY”, are both suggestive of leisurely activities on Sunday, which is traditionally a day of rest. Both phrases have the same number of letters in the same 4/6 sequence, and both words in each case start with the same alliterative letter “S”. As such, there is a consistency to the two marks which would cause the average consumer to see them as brand variations. For example, “SOAK SUNDAY” could be the relaxing bath range of “SLOW SUNDAY” – a range of cosmetics and toiletries designed to be used when one is at leisure. The average consumer would therefore see an economic connection between the marks such that they indicate goods sold by the same or economically linked undertakings. Given the degree of consistency

between the marks, I find that there is a likelihood of indirect confusion which extends to those goods that I have found to be of a low level of similarity.

## **CONCLUSION**

61. The opposition has succeeded in relation to the following goods, for which the application is refused:

Class 3      Cosmetics; toiletry preparations; make-up powder; cosmetic creams; beauty masks; cosmetic kits; make-up preparations; eyeshadow; eyebrow cosmetics; eyebrow pencils; mascara; cosmetic pencils; lipsticks; lip glosses; lipstick cases; make-up removing preparations; cleaning preparations; cleaner for cosmetic brushes; adhesives for cosmetic purposes; cotton sticks for cosmetic purposes; false eyelashes; false nails; nail varnish; nail care preparations; emery; hair dyes; hair straightening preparations; oils for cosmetic purposes; perfumes; essential oils; fragrances; skin whitening creams; sunscreen preparations; after-sun lotions; sun-tanning preparations; shoe polish.

62. The application will proceed to registration, subject to appeal, in respect of the following goods:

Class 3      Dentifrices.

## **COSTS**

63. The opponent has been almost wholly successful in its opposition. In line with Annex A of Tribunal Practice Notice 2 of 2016, I award costs to the opponent as follows:

Official fees:	£100
Preparing a statement and considering the other side's statement:	£200
Preparing a written submission:	£300
<b>Total:</b>	<b>£600</b>

64. I order Roadget Business Pte. Ltd to pay Amelia Knight Limited the sum of £600. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

**Dated this 21<sup>st</sup> day of December 2022**

**JOHN WILLIAMS  
For the Registrar**