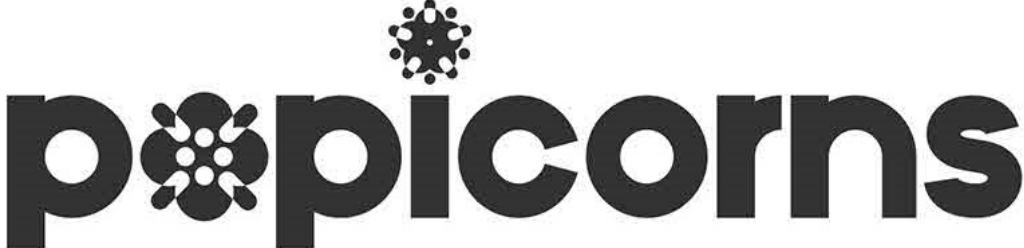


o/604/22

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. UK00003574665
BY GUANGZHOU POPICORNS TECHNOLOGY CO., LTD
TO REGISTER THE TRADE MARK:**

The logo for 'popcorns' features the word in a bold, lowercase, sans-serif font. The letter 'o' is replaced by a stylized popcorn kernel icon, and the letter 'p' is also replaced by a similar icon. A smaller, identical icon is positioned above the letter 'i'.

IN CLASSES 11, 20 AND 35

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 424371
BY SIMON WASHBROOK**

BACKGROUND AND PLEADINGS

1. On 5 January 2021, GUANGZHOU POPICORNS TECHNOLOGY CO., LTD. (“the applicant”) applied to register the trade mark shown on the cover page of this decision in the UK. The application was published for opposition purposes on 26 February 2021 and registration is sought for the goods and services set out in the Annex to this decision.

2. On 12 May 2021, the application was partially opposed by Simon Washbrook (“the opponent”) based upon section 5(2)(b) of the Trade Marks Act 1994 (“the Act”) and is directed against the following services of the application¹:

Class 35 Online advertising on a computer network; Presentation of goods on communication media, for retail purposes; Advertising flyer distribution; Display services for merchandise; Advertising and promotion services; Pay per click advertising; Providing commercial information and advice for consumers in the choice of products and services; Business management consultancy; Providing business information; Sales promotion for others; Provision of an online marketplace for buyers and sellers of goods and services; Job and personnel placement; Invoicing services; Accounting services; Sponsorship search; Wholesale services for pharmaceutical, veterinary and sanitary preparations and medical supplies; Wholesale ordering services.

3. Under section 5(2)(b) the opponent relies upon the following trade mark:

popcorn

UK registration no. UK00003130499

Filing date 3 November 2015; Registration date 22 January 2016.

¹ This was clarified in the Amended Form TM7 which was received by the Tribunal on 14 June 2022.

4. Under section 5(2)(b), the opponent relies upon all of the services for which its mark is registered, as set out in the Annex to this decision. The opponent claims that there is a likelihood of confusion because the marks and the services are similar.

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

6. The opponent is unrepresented, and the applicant is represented by Isabelle Bertaux. Neither party requested a hearing nor filed evidence. However, the opponent filed submissions in lieu. This decision is taken following a careful perusal of the papers.

7. 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 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.

DECISION

8. Section 5(2)(b) 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.”

9. 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 ... or international trade mark (UK) ... 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,

(aa) a comparable trade mark (EU) or a trade mark registered pursuant to an application made under paragraph 25 of Schedule 2A which has a valid claim to seniority of an earlier registered trade mark or protected international trade mark (UK) even where the earlier trade mark has been surrendered or its registration has expired;

(ab) a comparable trade mark (IR) or a trade mark registered pursuant to an application made under paragraph 28, 29 or 33 of Schedule 2B which has a valid claim to seniority of an earlier registered trade mark or protected international trade mark (UK) even where the earlier trade mark has been surrendered or its registration has expired;

[...]

10. Section 6A of the Act states:

“(1) This section applies where

(a) an application for registration of a trade mark has been published,

(b) there is an earlier trade mark of a kind falling within section 6(1)(a),
(aa) or (ba) in relation to which the conditions set out in section 5(1),
(2) or (3) obtain, and

(c) the registration procedure for the earlier trade mark was completed before the start of the relevant period.

(1A) In this section “the relevant period” means the period of 5 years ending with the date of the application for registration mentioned in subsection (1)(a) or (where applicable) the date of the priority claimed for that application.

(2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.

(3) The use conditions are met if –

(a) within the relevant period the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or

(b) the earlier trade mark has not been so used, but there are proper reasons for non- use.

(4) For these purposes –

(a) use of a trade mark includes use in a form (the “variant form”) differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and

(b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(5)-(5A) [Repealed]

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services.”

11. The opponent’s mark qualifies as an earlier mark in accordance with section 6(1)(a) as its filing date is an earlier date than the applicant’s mark. Albeit the applicant has requested proof of use, the opponent’s mark had not completed its registration process more than 5 years before the filing date of the mark in issue, and therefore it is not subject to proof of use pursuant to section 6A(1) and (1A) of the Act. The opponent can, therefore, rely upon all of the services it has identified.

Section 5(2)(b) case law

12. 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 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. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account. In the judgment of the Court of Justice of the European Union (“CJEU”) in Canon, Case C-39/97, the court stated at paragraph 23 that:

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

14. Guidance on this issue has 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

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

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

16. 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.”

17. In *Beautimatic International Ltd v Mitchell International Pharmaceuticals Ltd and Another*, [2000] F.S.R. 267 (HC), Neuberger J. (as he then was) stated that:

“I should add that I see no reason to give the word “cosmetics” and “toilet preparations”... anything other than their natural meaning, subject, of course, to the normal and necessary principle that the words must be construed by reference to their context.”

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

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

19. 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.”

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.”

Online advertising on a computer network; Presentation of goods on communication media, for retail purposes; Display services for merchandise; Advertising and promotion services; Pay per click advertising; Sales promotion for others

20. I consider that the applicant's above services falls within the broader category of "advertising, marketing and promotion services" in the opponent's specification. I consider them identical on the principle outlined in *Meric*.

Advertising flyer distribution

21. I consider that the applicant's above services falls within the broader category of "distribution of advertising, marketing and promotional material" in the opponent's specification. I consider them identical on the principle outlined in *Meric*.

Sponsorship search

22. I consider that the applicant's above services would involve undertakings which research and find sponsors for companies or individuals. I consider that sponsorship is a form of marketing, and therefore falls within the broader category of "advertising, marketing and promotion services" in the opponent's specification. I consider them identical on the principle outlined in *Meric*.

Business management consultancy

23. I consider that the opponent's "business management consulting with relation to strategy, marketing, production, personnel and retail sale matters" services falls within the broader category of "business management consultancy" in the applicant's specification. I consider them identical on the principle outlined in *Meric*.

Providing business information

24. I consider that the applicant's above services are self-evidently identical to "information or enquiries on business and marketing" in the opponent's specification.

Job and personnel placement

25. I consider that the opponent's "recruitment services for sales and marketing personnel" services falls within the broader category of "job and personnel placement" in the applicant's specification. I consider them identical on the principle outlined in *Meric*.

Providing commercial information and advice for consumers in the choice of products and services

26. I have no evidence from either party as to what the above services are or cover. However, I consider that it is most likely to cover, and would be provided by undertakings, which promotes informed customer choice in the purchase of goods and services by, most likely, testing the products. Therefore, I do not consider that it would overlap with the opponent's, *inter alia*, class 35 advertising, promotional and marketing services. I do not consider that it would overlap in trade channels because the opponent's services would be provided by advertising, promotional and marketing undertakings. I do not consider that they overlap in nature, method of use or purpose. Even if they overlap in user, this is not enough on its own to establish similarity. I do not consider that the services are in competition or complementary. Consequently, I consider that the services are dissimilar.

Provision of an online marketplace for buyers and sellers of goods and services

27. I consider that the applicant's above services are dissimilar to all of the opponent's, *inter alia*, class 35 advertising, promotional and marketing services. I do not consider that they overlap in trade channels because the applicant's services would be provided by an undertaking which provides an online marketplace. I do not consider that they overlap in nature, method of use or purpose. Albeit they overlap in user, this is not enough on its own to establish similarity. I do not consider that the services are in competition or complementary. I consider that the services are dissimilar.

Invoicing services; Accounting services

28. I consider that the applicant's above services are dissimilar to all of the opponent's, *inter alia*, class 35 advertising, promotional and marketing services. I do not consider that they overlap in trade channels because the applicant's services would be provided by undertakings which specialise in finance, accounting and invoicing whereas the opponent's would be provided by advertising, promotional and marketing undertakings. Consequently, I do not consider that they overlap in nature, method of use or purpose. Albeit they overlap in user, this is not enough on its own to establish similarity. I do not consider that the services are in competition or complementary. Therefore the services are dissimilar.

Wholesale services for pharmaceutical, veterinary and sanitary preparations and medical supplies; Wholesale ordering services

29. I do not consider that the applicant's above services overlaps with the opponent's, *inter alia*, class 35 advertising, promotional and marketing services. I do not consider that they overlap in trade channels because the applicant's services would be provided by undertakings who specialise in wholesale, whereas the opponent's would be provided by advertising, promotional and marketing undertakings. Consequently, I do not consider that they overlap in nature, method of use or purpose. Albeit they overlap in user, this is not enough on its own to establish similarity. I do not consider that the services are in competition or complementary. Therefore the services are dissimilar.

30. It is a prerequisite of section 5(2)(b) that the services be identical or at least similar. The opposition will, therefore, fail in respect of the services that I have found to be dissimilar.²

31. The opposition under section 5(2)(b) fails for the following goods:

Class 35 Providing commercial information and advice for consumers in the choice of products and services; Provision of an online marketplace for buyers and sellers of goods and services; Invoicing services; Accounting

² eSure Insurance v Direct Line Insurance, [2008] ETMR 77 CA

services; Wholesale services for pharmaceutical, veterinary and sanitary preparations and medical supplies; Wholesale ordering services.

The average consumer and the nature of the purchasing act

32. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' services. I must then determine the manner in which the 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.”

33. The average consumer for the services, that I have found to be in conflict, will be both members of the general public and businesses. The cost of purchase is likely to vary, but it is not likely to be at the very highest end of the scale. The frequency of the purchase is also likely to vary, although it is unlikely to be particularly regular. The average consumer will take various factors into consideration such as the suitability for the user's particular needs, ease of use and reliability. Consequently, I consider that a medium degree of attention will be paid during the purchasing process.

34. The services are likely to be purchased from a specialist business management or advertising undertaking or its online equivalent. Visual considerations are, therefore, likely to dominate the selection process. Alternatively, the services may be purchased following perusal of advertisements or inspection of a business directory. However, I do not discount that there may be an aural component to the purchase of the services

given that advice may be sought from a sales assistant, or a recommendation may have been given through word-of-mouth.



Comparison of the trade marks

35. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade 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 trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components. The CJEU stated, at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

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

36. 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.

37. The respective trade marks are shown below:

Opponent's trade mark	Applicant's trade mark
	

38. The opponent's mark consists of the word popcorn. There are no other elements to contribute to the overall impression which lies in the word itself.

39. The applicant submits that its mark is the invented word 'popicorns'. I am satisfied that this is the manner in which a significant proportion of average consumers will read the word. Therefore, despite the stylisation, I shall proceed on the basis that the majority of average consumers will read the mark as the word 'popicorns'. The O consists of a diamond shaped device and the tittle consists of a star shaped device. I consider that the word 'popicorns' plays a greater role in the overall impression of the mark, with the devices and stylisation playing a lesser role.

40. Visually, the marks coincide in the letters P, P, C, O, R and N. The addition of the O device and the tittle device in the applicant's mark act as visual points of difference. The letters I and S also acts as a visual point of difference. I also bear in mind that registration of a word only mark covers use in any standard typeface. I do not, therefore, consider that the slight stylisation in the applicant's mark (being the stylisation of the letters P, P, C, O, R, N and S) creates a significant point of difference between them. Taking all of the above into account, I consider that the marks are visually similar to between a medium and high degree.

41. Aurally, the opponent's mark will be pronounced as POP-CORN. The applicant's mark will be pronounced as POP-EE-CORNS. Therefore, as the marks overlap in the identical pronunciation of the first syllable, and the last syllable is highly similar, albeit the applicant's syllable is plural, I consider that the marks are aurally similar to between a medium and high degree.

42. Conceptually, the word popcorn in the opponent's mark will be assigned its ordinary dictionary meaning, which is a snack which consists of grains of maize or corn which have been heated until they burst.³ The word 'popicorn' in the applicant's mark will be viewed as an invented word which would be attributed no particular meaning. Consequently, I consider that the marks are conceptually dissimilar.

³ <https://www.collinsdictionary.com/dictionary/english/popcorn>

Distinctive character of the earlier trade mark

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

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-2779, paragraph 49).

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

44. 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 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.

45. As the opponent has not filed any evidence to show that the distinctiveness of its mark has been enhanced through use, I only have the inherent position to consider.

46. As noted above, I consider that the average consumer would recognise the opponent's mark as the ordinary dictionary word popcorn. I do not consider that the mark is descriptive or allusive of the services for which the mark is registered. Therefore, I consider that the mark is inherently distinctive to a medium degree.

Likelihood of confusion

47. 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. 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. It is necessary for me to keep in mind the distinctive character of the earlier 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.

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

- The opponent's mark consists of the word popcorn. There are no other elements to contribute to the overall impression which lies in the word itself.
- The applicant's mark, despite the stylisation, will be read as the word 'popicorns' by a significant proportion of average consumers which plays a greater role in the overall impression of the mark, with the diamond/star devices and stylisation playing a lesser role.
- I have found the marks to be visually similar to between a medium and high degree.

- I have found the marks to be aurally similar to between a medium and high degree.
- I have found the marks to be conceptually dissimilar.
- I have found the opponent's mark to be inherently distinctive to a medium degree.
- I have identified the average consumer as members of the general public and businesses, who 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.
- Excluding the services which I have found not to be similar, I have found the parties' services to be identical.

49. Taking all of the factors listed in paragraph 48 into account, bearing in mind the principle of imperfect recollection, I consider that the marks are likely to be mistakenly recalled or misremembered as each other. This is particularly the case given the relatively high visual similarity between the marks and the predominantly visual purchasing process. Even where aural considerations play a greater role, the higher aural similarity between the marks will have the same result. I consider that the devices in the applicant's mark would likely be overlooked because they are incorporated into the word, creating the letters O and I. I also consider that the beginnings of marks tend to make more of an impact than the ends. Therefore, I consider that because the marks share the same beginnings, (POP), and the same ends (CORN), with the differences between the marks in the letter "I" in the middle of the applicant's mark, and the letter "S" at the end of the applicant's mark, that these letters (and the tittle device) will be overlooked by the average consumer. Furthermore, I also consider that the difference created by the letter "S" isn't sufficient for consumers to differentiate between the marks because consumers could misremember whether the word was singular or plural. Lastly, I consider that, in the absence of any conceptual hook in the applicant's mark, the average consumer will not have a strong conceptual message to assist them in differentiating between the marks. Taking all of this into account, for those identical services, I consider there to be a likelihood of direct confusion.

CONCLUSION

50. The opposition is partially successful in respect of the following services, for which the application is refused:

Class 35 Online advertising on a computer network; Presentation of goods on communication media, for retail purposes; Advertising flyer distribution; Display services for merchandise; Advertising and promotion services; Pay per click advertising; Business management consultancy; Providing business information; Sales promotion for others; Job and personnel placement; Sponsorship search.

51. The application can proceed to registration in respect of the following services for which the opposition has been unsuccessful:

Class 35 Providing commercial information and advice for consumers in the choice of products and services; Provision of an online marketplace for buyers and sellers of goods and services; Invoicing services; Accounting services; Wholesale services for pharmaceutical, veterinary and sanitary preparations and medical supplies; Wholesale ordering services.

52. The opposition was not directed against the following goods for which the application can also proceed to registration:

Class 11 Lighting apparatus and installations; Lamps; Lamp shades; String lights for festive decoration; Chandeliers; Lanterns; Wall lamps; Head torches; Baking ovens for household purposes; Electric cookers; Beverage cooling and ice dispensing machines; Hair dryers; Air-conditioning apparatus; Heating apparatus; Mixer taps for water pipes; Faucets; Bathroom fixtures; Showers; Disinfectant apparatus; Water purification installations; Portable electric heaters.

Class 20 Beds; Sofas; Tables; Furniture; Seats; Taps, not of metal, for casks; Boxes of wood or plastic; Containers, not of metal, for liquid fuel;

Workbenches; Mirrors; Industrial packaging containers of bamboo; Wind chimes; Bead curtains for decoration; Works of art made of wood; Display boards; Decorations of plastic for foodstuffs; Pet cushions; Legs for furniture; Pillows; Internal venetian blinds; Bamboo.

COSTS

53. As both parties have achieved what I regard as a roughly equal measure of success, I direct that both parties should bear their own costs.

Dated this 14th day of July 2022

L FAYTER

For the Registrar

ANNEX

The applicant's mark

Class 11

Lighting apparatus and installations; Lamps; Lamp shades; String lights for festive decoration; Chandeliers; Lanterns; Wall lamps; Head torches; Baking ovens for household purposes; Electric cookers; Beverage cooling and ice dispensing machines; Hair dryers; Air-conditioning apparatus; Heating apparatus; Mixer taps for water pipes; Faucets; Bathroom fixtures; Showers; Disinfectant apparatus; Water purification installations; Portable electric heaters.

Class 20

Beds; Sofas; Tables; Furniture; Seats; Taps, not of metal, for casks; Boxes of wood or plastic; Containers, not of metal, for liquid fuel; Workbenches; Mirrors; Industrial packaging containers of bamboo; Wind chimes; Bead curtains for decoration; Works of art made of wood; Display boards; Decorations of plastic for foodstuffs; Pet cushions; Legs for furniture; Pillows; Internal venetian blinds; Bamboo.

Class 35

Online advertising on a computer network; Presentation of goods on communication media, for retail purposes; Advertising flyer distribution; Display services for merchandise; Advertising and promotion services; Pay per click advertising; Providing commercial information and advice for consumers in the choice of products and services; Business management consultancy; Providing business information; Sales promotion for others; Provision of an online marketplace for buyers and sellers of goods and services; Job and personnel placement; Invoicing services; Accounting services; Sponsorship search; Wholesale services for pharmaceutical, veterinary and sanitary preparations and medical supplies; Wholesale ordering services.

The opponent's mark

Class 35

Advertising and marketing; Advice concerning chemical product marketing; Advice in the field of business management and marketing; Conducting marketing studies; Development of marketing strategies and concepts; Implementation and follow-up of advice [services of a contractor] in the fields of marketing; Information or enquiries on

business and marketing; Rental of all publicity and marketing presentation materials; Statistical evaluations of marketing data; Advertising and marketing services; Advertising, marketing and promotion services; Advertising, marketing and promotional services; Advertising, promotional and marketing services; Business marketing consultation services; Business marketing services; Direct marketing; Direct marketing services; Market research and marketing studies; Marketing consultation services; Marketing research services; Marketing services; Business management consulting with relation to strategy, marketing, production, personnel and retail sale matters; Promotion, advertising and marketing of on-line websites; Commercial information agencies [provides business information, e.g., marketing or demographic data]; Administration relating to marketing; Advice relating to marketing management; Advisory services relating to marketing; Analysis relating to marketing; Business advice relating to marketing; Business advice relating to marketing management consultations; Business advice relating to strategic marketing; Business consultancy services relating to marketing; Business consultancy services relating to the marketing of fund raising campaigns; Conducting of marketing studies; Consultancy relating to marketing; Consulting services relating to marketing; Estimations for marketing purposes; Financial marketing; Investigations of marketing strategy; Marketing (business advice relating to -); Marketing advisory services; Marketing agency services; Marketing analysis; Marketing assistance; Marketing by telephone; Marketing consultancy; Marketing forecasting; Marketing information; Marketing management advice; Personnel management of marketing personnel; Planning of marketing strategies; Planning services for marketing studies; Preparation of marketing plans; Preparation of reports for marketing; Product marketing; Production of sound recordings for marketing purposes; Production of video recordings for marketing purposes; Professional consultancy relating to marketing; Promotional marketing; Provision of advice relating to marketing; Provision of information relating to marketing; Provision of marketing advisory services for manufacturers; Provision of marketing information; Provision of marketing reports; Recruitment services for sales and marketing personnel; Research services relating to marketing; Telephone marketing services [not selling]; Trade marketing [other than selling]; Video recordings for marketing purposes (production of-); Arranging and conducting marketing promotional events for others; Marketing analysis services; Search engine marketing services; Advertising and marketing consultancy; Business

consultation and management regarding marketing activities; Marketing research in the fields of cosmetics, perfumery and beauty products; Marketing research; Marketing studies; Marketing; Distribution of advertising, marketing and promotional material; Marketing the goods and services of others; Providing information in the field of marketing; Providing marketing consulting in the field of social media; Design of marketing surveys.