

O-275-14

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO. 2563306**

**BY**

**SHINE LIMITED**

**TO REGISTER THE TRADE MARK**

**MASTERCHEF**

**IN CLASSES 8, 9, 16, 24, 25, 28, 41 and 43**

**AND**

**THE OPPOSITION THERETO**

**UNDER NO 104185**

**BY**

**VALE MILL (ROCHDALE) LIMITED**

## BACKGROUND

1. On 4 November 2010, Shine Limited (the applicant) applied to register the above trade mark in classes 8, 9, 16, 24, 25, 28, 41 and 43 of the Nice Classification system.<sup>1</sup> However, for the purposes of these proceedings it is only necessary for me to consider the goods in classes 8, 16, 24 and 25 as follows<sup>2</sup>:

### **Class 8**

Cutlery; kitchen knives, can openers, knife sharpeners, pizza cutters, ice picks, meat choppers, nutcrackers, oyster openers, scissors, cheese slicers, spatulas, vegetable choppers, slicers and peelers.

### **Class 16**

Kitchen roll; paper towels

### **Class 24**

Textile goods not included in other classes; table linen; table cloths, table mats, table runners, napkins; towels; tea towels.

### **Class 25**

Clothing, footwear, headgear; aprons.

2. Following publication of the application, on 7 September 2012, Vale Mill (Rochdale) Limited (the opponent) filed notice of opposition against the application.

3. The opposition is based on section 5(1) of the Trade Marks Act 1994 (the Act) in respect of the opponent's "oven-heat resistant pads, place mats". The remaining goods are opposed under section 5(2)(a) of the Act. The opponent relies upon United Kingdom trade mark registration no 1417500:

<b>Mark details and relevant dates</b>	<b>Goods relied upon</b>
<p><b>Mark:</b></p> <p><b>MASTER CHEF</b></p> <p><b>Filed:</b> 14 March 1990 <b>Registered:</b> 14 February 1992</p> <p><b>Disclaimer:</b> Registration of this mark shall give no right to the exclusive use, separately, of the words "Master" and "Chef".</p>	<p><b>Class 21</b> Oven gloves, oven mitts, oven gauntlets, oven-heat resistant pads, place mats; all included in Class 21.</p>

<sup>1</sup> *International Classification of Goods and Services for the Purposes of the Registration of Marks under the Nice Agreement (15 June 1957, as revised and amended).*

<sup>2</sup> *Despite a bald assertion in its notice of opposition that **all** of the applied for goods and services are similar to the goods for which the earlier mark is registered, the opponent's submissions are more limited and state: "The contested mark covers the following goods which are similar to the goods covered by the registration..." and proceeds to list the goods I have listed in paragraph 1 above.*

4. The applicant filed a counterstatement on 3 October 2013. It denies the grounds on which the opposition is based and requests the opponent provide proof of use of its mark.
5. Only the opponent filed evidence, the applicant filed submissions in reply; neither party asked to be heard and both filed written submissions in lieu of attendance at a hearing.
6. I give this decision following a review of all of the material before me.

## EVIDENCE

7. The opponent's evidence consists of a witness statement by James McHugh, a Trade Mark Attorney at Wilson Gunn. It is dated 10 January 2014 and is accompanied by 2 exhibits, the second of which is a witness statement, dated 15 March 2010, by Alan Donnelly, the Financial Director of the opponent company. He has been employed by them since 1996. His witness statement is accompanied by three exhibits. Mr McHugh states that this witness statement and exhibits were filed in defence of a cancellation action filed against the mark relied on in these proceedings on 1 October 2009. The main facts emerging from the statements are as follows:

*"3. The primary business of [the opponent company] is homecare products which include ironing boards, airers and a range of other products used in the kitchen and bathroom and in the domestic environment in general. This activity has been carried out largely in the United Kingdom."*

8. Exhibit JM1 consists of prints taken from the websites of Tesco, Sainsbury's and Argos. The prints are not dated and do not show any of the opponent company's products. In written submissions dated 10 December 2013 (the paragraphs of which are not numbered) the opponent states that the prints:

*"all show that 'tea towels', 'oven gloves', 'napkins', 'table cloths' and 'aprons' are sold through the same distribution channels and share the same point of sale."*

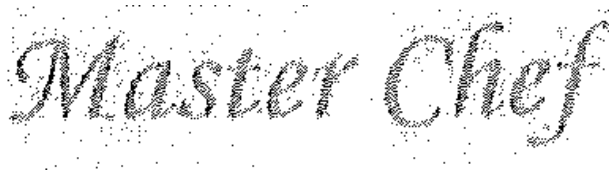
9. In the same document the applicant also draws attention to the print from Tesco, *"showing that tea towels, oven gloves and aprons are sold in sets"*.

10. The prints show a range of products including, inter alia, oven gloves, tea towels, table cloth clips and an egg cosy. It is not clear from this print what the search term was that generated the results.

11. Exhibit JM2 is the second witness statement and exhibits. Exhibit AD1 (attached to that witness statement) is described by Mr Donnelly as:

*"an oven glove in plastic packaging bearing the mark MASTER CHEF sold by [the opponent company]."*

12. The exhibit is a photograph does which not show the product though some pale coloured, woven material can be distinguished behind the label. The top of the label features an elaborate illustration of a cooking pot and ladle. Below it is the word BESCO. Below that are the words, 'Master Chef', presented as follows:



13. Below that are the words OVEN GLOVE. The exhibit is not dated.

14. Exhibit AD2 is described by Mr Donnelly as:

*“...extracts from [the opponent company’s] UK sales figures in relation to plain whipped and bound blue versions of oven gloves as shown in DT1<sup>3</sup> during the period October 2004 to September 2009.”*

15. The exhibit consists of two sheets which show six columns of figures on each. The first page has headings for each column by year. The final column is a total of sales from October 2004 - September 2009. The first page has ‘PLAIN WHIPPED’ hand written at the bottom. The second page also contains six columns but these do not have headings. The final column is a total of the other five columns. The words ‘BOUND BLUE’ are hand written at the bottom of the page. The figures shown are as follows:

	PLAIN WHIPPED	BOUND BLUE
October 2008 - September 2009	1941.30	1524.00
October 2007 - September 2008	2391.58	1923.60
October 2006 - September 2007	2549.00	1724.80
October 2005 - September 2006	2976.55	1871.80
October 2004 - September 2005	3594.70	2197.40
Total (Oct 04 - Sept 09)	13453.13	9241.80

16. Exhibit AD3 consists of three invoices which Mr Donnelly states relate to sales to various retailers in the UK of oven gloves as shown in AD1.

17. The first invoice is dated 13 July 2009 and is addressed to Country Kitchen Supp (presumably, ‘supplies’) located in Worcestershire. The item listed on the invoice is described as M/CHEF D O GLV 86CM WHIPPED. The order amount is shown as 500. The value of the invoice is £632.50.

18. The second invoice is dated 08 June 2009 and is addressed to THE COOK SHOP, located in Somerset. Two items are listed M/CHEF D O GLV 86CM WHIPPED and M/CHEF D O GLV 86CM BOUND BLUE. Quantity is shown as 60 and 50 respectively. The invoice total is £193.72.

19. The third invoice is dated 17 September 2009 and is addressed to LEATHLEY’S HOUSE AND HOME, located in North Yorkshire. A large number of items is listed, but only

<sup>3</sup> I do not have any exhibits titled DT1 before me in these proceedings. Since Mr McHugh has stated that these exhibits are copies of exhibits filed in a different case I can only presume they refer to an exhibit filed in those proceedings and are not relevant to the matter before me.

one appears to relate to any of the goods at issue. The fifth item on the list is M/CHEF D O GLV 86CM WHIPPED. Quantity is 200. The price for the item is listed as £220.00. The remaining items are all cleaning and other household goods such as dusters, scourers, soak ups and a jumbo airer.

20. That concludes my summary of the evidence.

## **DECISION**

21. Sections 5(1) and 5(2)(a) of the Act read as follows:

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

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

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

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

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

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

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

23. In these proceedings the opponent is relying upon the trade mark shown in paragraph 3 which constitutes an earlier trade mark under these provisions. The application was published on 7 September 2012. The opponent's earlier mark completed its registration procedure on 14 February 1992. Consequently, the opponent's registration is subject to proof of use, as per The Trade Marks (Proof of Use, etc) Regulations 2004 and the applicant has requested the opponent to prove its use.

24. The relevant sections of the Proof of Use Regulations read as follows:

“6A Raising of relative grounds in opposition proceedings in case of non-use

(1) This section applies where –

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

(b) there is an earlier trade mark 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 period of five years ending with the date of publication.

(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 period of five years ending with the date of publication of the application 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 differing in elements which do not alter the distinctive character of the mark in the form in which it was registered, 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) In relation to a Community trade mark, any reference in subsection (3) or (4) to the United Kingdom shall be construed as a reference to the European Community.

(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.

(7) Nothing in this section affects –

(a) the refusal of registration on the grounds mentioned in section 3 (absolute grounds for refusal) or section 5(4) (relative grounds of refusal on the basis of an earlier right), or

(b) the making of an application for a declaration of invalidity under section 47(2)(application on relative grounds where no consent to registration).”

25. The relevant period is the five year period ending on the date of publication of the application, namely 8 September 2007 to 7 September 2012. The onus is on the opponent, under section 100 of the Act, to show genuine use of its mark during this period in respect of those goods relied on or, alternatively, to show that there are proper reasons for non-use of the mark during this period.

## Proof of use

26. In reaching a conclusion on this point, I must apply the same factors as I would if I were determining an application for revocation based on grounds of non-use.

27. The requirements for “genuine use” have been set out by the Court of Justice of the European Union (CJEU) in its judgments in *Ansul BV v Ajax Brandbeveiliging BV*, Case C-40/01 [2003] RPC 40 and *Silberquelle GmbH v Maselli-Strickmode GmbH* Case C495/07, [2009] ETMR 28 and by the Court of Appeal in the UK in *LABORATOIRE DE LA MER Trade Mark* [2006] FSR 5. The principles established in these judgments have been conveniently summarised by Ms Anna Carboni, sitting as the Appointed Person in O-371-09 *SANT AMBROEUS*:

“42. The hearing officer set out most of the key extracts from *Ansul* and *La Mer* in his decision, so I shall not reproduce them here. Instead, I try to summarise the “legal learning” that flows from them, adding in references to *Silberquelle* where relevant:

(1) Genuine use means actual use of the mark by the proprietor or a third party with authority to use the mark: *Ansul*, [35] and [37].

(2) The use must be more than merely “token”, which means in this context that it must not serve solely to preserve the rights conferred by the registration: *Ansul*, [36].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end-user by enabling him, without any possibility of confusion, to distinguish the goods or services from others which have another origin: *Ansul*, [36]; *Silberquelle*, [17].

(4) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, i.e. exploitation that is aimed at maintaining or creating an outlet for the goods or services or a share in that market: *Ansul*, [37]-[38]; *Silberquelle*, [18].

(a) Example that meets this criterion: preparations to put goods or services on the market, such as advertising campaigns: *Ansul*, [37].

(b) Examples that do not meet this criterion: (i) internal use by the proprietor: *Ansul*, [37]; (ii) the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle*, [20]-[21].

(5) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including in particular, the nature of the goods or services at issue, the characteristics of the market concerned, the scale and frequency of use of the mark, whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them, and the evidence that the proprietor is able to provide: *Ansul*, [38] and [39]; *La Mer*, [22] - [23].

(6) Use of the mark need not always be quantitatively significant for it to be deemed genuine. There is no de minimis rule. Even minimal use may qualify as genuine use if it is the sort of use that is appropriate in the economic sector concerned for preserving or creating market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor: *Ansul*, [39]; *La Mer*, [21], [24] and [25].”

28. In addition, I will keep in mind the guidance in *Thomson Holidays Ltd v Norwegian Cruise Lines Ltd* [2003] RPC 32 in relation to determining what constitutes a fair specification, namely:

“29. I have no doubt that Pumfrey J. was correct to reject the approach advocated in the *Premier Brands* case. His reasoning in paras [22] and [24] of his judgment is correct. Because of s.10(2), fairness to the proprietor does not require a wide specification of goods or services nor the incentive to apply for a general description of goods and services. As Mr Bloch pointed out, to continue to allow a wide specification can impinge unfairly upon the rights of the public. Take, for instance, a registration for "motor vehicles" only used by the proprietor for motor cars. The registration would provide a right against a user of the trade mark for motor bikes under s.10(1). That might be understandable having regard to the similarity of goods. However, the vice of allowing such a wide specification becomes apparent when it is envisaged that the proprietor seeks to enforce his trade mark against use in relation to pedal cycles. His chances of success under s.10(2) would be considerably increased if the specification of goods included both motor cars and motor bicycles. That would be unfair when the only use was in relation to motor cars. In my view the court is required in the words of Jacob J. to "dig deeper". But the crucial question is--how deep?

30. Pumfrey J. was, I believe, correct that the starting point must be for the court to find as a fact what use has been made of the trade mark. The next task is to decide how the goods or services should be described. For example, if the trade mark has only been used in relation to a specific variety of apples, say Cox's Orange Pippins, should the registration be for fruit, apples, eating apples, or Cox's Orange Pippins?

31. Pumfrey J. in *Decon* suggested that the court's task was to arrive at a fair specification of goods having regard to the use made. I agree, but the court still has the difficult task of deciding what is fair. In my view that task should be carried out so as to limit the specification so that it reflects the circumstances of the particular trade and the way that the public would perceive the use. The court, when deciding whether there is confusion under s.10(2), adopts the attitude of the average reasonably informed consumer of the products. If the test of infringement is to be applied by the court having adopted the attitude of such a person, then I believe it appropriate that the court should do the same when deciding what is the fair way to describe the use that a proprietor has made of his mark. Thus, the court should inform itself of the nature of trade and then decide how the notional consumer would describe such use.”



29. The comments of Mr Justice Jacob in *Animal Trade Mark* [2004] FSR 19 are also relevant and read:

“20. The reason for bringing the public perception in this way is because it is the public which uses and relies upon trade marks. I do not think there is anything technical about this: the consumer is not expected to think in a pernickety way because the average consumer does not do so. In coming to a fair description the notional average consumer must, I think, be taken to know the purpose of the description. Otherwise they might choose something too narrow or too wide. Thus, for instance, if there has only been use for threeholed razor blades imported from Venezuela (Mr T.A. Blanco White's brilliant and memorable example of a narrow specification) "three-holed razor blades imported from Venezuela" is an accurate description of the goods. But it is not one which an average consumer would pick for trade mark purposes. He would surely say "razor blades" or just "razors". Thus the "fair description" is one which would be given in the context of trade mark protection. So one must assume that the average consumer is told that the mark will get absolute protection ("the umbra") for use of the identical mark for any goods coming within his description and protection depending on confusability for a similar mark or the same mark on similar goods ("the penumbra"). A lot depends on the nature of the goods--are they specialist or of a more general, everyday nature? Has there been use for just one specific item or for a range of goods? Are the goods on the High Street? And so on. The whole exercise consists in the end of forming a value judgment as to the appropriate specification having regard to the use which has been made.”

30. The comments of the Court of First Instance (now the General Court) in *Reckitt Benckiser (España), SL v OHIM*, Case T- 126/03 are also relevant where it held that:

“45. It follows from the provisions cited above that, if a trade mark has been registered for a category of goods or services which is sufficiently broad for it to be possible to identify within it a number of sub-categories capable of being viewed independently, proof that the mark has been put to genuine use in relation to a part of those goods or services affords protection, in opposition proceedings, only for the sub-category or subcategories to which the goods or services for which the trade mark has actually been used belong. However, if a trade mark has been registered for goods or services defined so precisely and narrowly that it is not possible to make any significant sub-divisions within the category concerned, then the proof of genuine use of the mark for the goods or services necessarily covers the entire category for the purposes of the opposition.

46. Although the principle of partial use operates to ensure that trade marks which have not been used for a given category of goods are not rendered unavailable, it must not, however, result in the proprietor of the earlier trade mark being stripped of all protection for goods which, although not strictly identical to those in respect of which he has succeeded in proving genuine use, are not in essence different from them and belong to a single group which cannot be divided other than in an arbitrary manner. The Court observes in that regard that in practice it is impossible for the proprietor of a trade mark to prove that the mark has been used for all conceivable variations of the goods concerned by the registration. Consequently, the concept of 'part of the goods or services' cannot be taken to mean all the commercial variations of similar

goods or services but merely goods or services which are sufficiently distinct to constitute coherent categories or sub-categories.”

31. First, I have to identify, as a matter of fact, whether the trade mark relied on by the opponent has actually been used and if so, in respect of which goods. Having reached a conclusion on that point, I must then go on to decide what, from the perspective of the average consumer of the goods, constitutes a fair specification.

32. In these proceedings the opponent relies upon the following goods in class 21:

Oven gloves, oven mitts, oven gauntlets, oven-heat resistant pads, place mats; all included in Class 21.

33. The opponent’s evidence shows the mark in the form I have reproduced above at paragraph 12.

34. Section 47(2) of the Act provides that use of a trade mark includes use “...in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered...” Normal and fair use of the opponent’s mark would include use of the mark in normal scripts. In my view, the differences between the earlier mark as registered and the example provided by the opponent simply come down to the choice of typeface and do not alter the distinctive character of the mark which rests in the words MASTER and CHEF.

35. The evidence shows use of the mark on one, undated, item of packaging on which the product cannot be seen. The product cannot be identified, though the supporting witness statement confirms that the product is an oven glove. It is not clear whether this is the product which has been sold in the UK during the relevant period.

36. Invoices show sales of oven gloves, under the trade mark, to three different companies with UK addresses, on three occasions in 2009, amounting to £1046.22. Whilst they all date from a similar time, the supporting witness statements give fairly consistent sales figures for each year, from October 2004 – Sept 2009. The sales figures show sales of oven gloves within the relevant period in the region of £3500. No figures were provided in evidence that give any indication of the size of the market in the UK. Consequently, I am unable to conclude the level of the opponent’s market share.

37. The applicant has disputed the sufficiency of the evidence provided by the opponent, but has not questioned its veracity. Whilst the evidence of use is not extensive, in its totality, it is sufficient, just, to show genuine use of the mark. Having established that there has been genuine use, I must now go on to consider what constitutes a fair specification.

38. In its submissions, dated 12 March 2014, the applicant states:

*“13. The Earlier Goods are ‘Oven gloves, oven mitts, oven gauntlets, oven-heat resistant pads, place mats; all included in Class 21’. Alan Donnelly refers to ‘oven gloves’ once in the Donnelly Witness Statement.*

*14. No evidence of ‘oven-heat resistance pads’ or ‘place mats’ has been submitted whatsoever. The Donnelly Witness Statement purports to show evidence of ‘oven gloves’ which is discussed below. There is no evidence to ‘oven-mitts’ which are fingerless (like mittens) or ‘oven gauntlets’, which are*

*protective items that have a long sleeve and cover the lower part of the arm. Again, no evidence at all of 'oven mitts, oven gauntlets' has been submitted."*

39. The opponent states:

*"10. As evidenced by Exhibit AD1, the Opponent's Earlier Trade Mark is clearly displayed on the packaging of the products, which have been sold throughout the UK as mentioned above.*

*11. It is submitted that this level of sales does constitute genuine use of the mark in respect of oven gloves during the relevant period and not merely token use."*

40. There is not a single exhibit or part of an exhibit which shows any use of 'oven-heat resistance pads' or 'place mats' and not a single reference is made in the evidence or the supporting witness statement of oven mitts or oven gauntlets. I have no examples of those goods and no sales figures or invoices which relate to them at all. The opponent has not shown use of these goods.

41. The evidence shows one product described by the opponent as an oven glove and sales figures and invoices which refer to the same product.

42. In *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited* BL O/345/10 Mr Geoffrey Hobbs QC, sitting as the appointed person, stated:

"However, that does not appear to me to alter the basic nature of the required approach. As to that, I adhere to the view that I have expressed in a number of previous decisions. In the present state of the law, fair protection is to be achieved by identifying and defining not the particular examples of goods or services for which there has been genuine use but the particular categories of goods or services they should realistically be taken to exemplify. For that purpose the terminology of the resulting specification should accord with the perceptions of the average consumer of the goods or services concerned."

43. Consequently, I find that the use shown by the opponent is sufficient to show use in respect of 'oven gloves'. This is how the average consumer would refer to these goods and it is neither too broad nor too picky and this is the basis on which I will proceed.

## **The Trade Marks**

44. Both sections of the Act relied upon for the purposes of this opposition require the competing marks to be identical. In *S.A. Société LTJ Diffusion v. Sadas Vertbaudet SA* [2003] FSR 34, the CJEU said, in relation to what constitutes an identical trade mark:

"51. There is therefore identity between the sign and the trade mark where the former reproduces, without any modification or addition, all the elements constituting the latter.

52. However, the perception of identity between the sign and the trade mark must be assessed globally with respect to an average consumer who is deemed to be reasonably well informed, reasonably observant and circumspect. The sign produces an overall impression on such a consumer. That consumer only rarely has the chance to make a direct comparison between signs and trade

marks and must place his trust in the imperfect picture of them that he has kept in his mind. Moreover, his level of attention is likely to vary according to the category of goods or services in question (see, to that effect, Case C-342/97 *Lloyd Schuhfabrik Meyer* [1999] E.C.R. I-3819 at para.[26]).

53. Since the perception of identity between the sign and the trade mark is not the result of a direct comparison of all the characteristics of the elements compared, insignificant differences between the sign and the trade mark may go unnoticed by an average consumer.

54. In those circumstances, the answer to the question referred must be that Art.5(1)(a) of the Directive must be interpreted as meaning that a sign is identical with the trade mark where it reproduces, without any modification or addition, all the elements constituting the trade mark or where, viewed as a whole, it contains differences so insignificant that they may go unnoticed by an average consumer.”

### Comparison of marks

45. The trade marks to be compared are as follows:

Opponent's mark	Applicant's mark
MASTER CHEF	MASTERCHEF

46. The applicant's mark consists of ten letters presented as one word in upper case. The opponent's mark consists of the same ten letters in the same order, presented as two separate words. In its counter statement the applicant states:

*“The Applicant denies that the Trade Mark and the trade mark in the Registration are identical. The applicant admits that the trade marks have some visual and aural similarities but denies that the marks are conceptually similar”.*

47. In its written submissions, the opponent states:

*“The two marks differ by only the addition of a space between MASTER and CHEF. Both marks share the same dominant and distinctive elements, both marks are phonetically and conceptually identical and it is submitted that the space is so insignificant that it would go unnoticed by the average consumer. Therefore, when viewed as a whole, the two marks are identical for the purposes of Section 5(1).”*

48. The applicant's mark separates naturally into two words which are well known in the English language and this is how it will be seen by the average consumer. The same two, well known, words make up the opponent's earlier mark. Whilst I am aware that the applicant does not believe its mark is identical to that of the opponent, the guidance provided in *Sadas* indicates that marks may be considered as identical where viewed as a whole the differences between them are “so insignificant that they may go unnoticed by an average consumer”. In my view, that is certainly the case here. The competing marks are identical.

## **The opposition under 5(1) of the Act**

49. The opponent relies on 'oven-heat resistant pads and place mats' for the opposition under this section of the Act. It states the following in its submissions:

*"19... 'oven-heat resistant pads, place mats' are identical to 'table mats' in class 24. Since the marks are identical and the goods are identical, the Application should be refused for table mats under Section 5(1) of the Act."*

**50. As the opponent has not proved use in respect of these goods the opposition under section 5(1) of the Act fails.**

## **The opposition under 5(2)(a) of the Act**

### **The average consumer and the nature of the purchasing act**

51. I must determine who the average consumer is and also identify the nature of the purchasing process. The average consumer is reasonably well informed and reasonably circumspect and observant but with a level of attention likely to vary according to the category of goods. The attention paid is likely to vary depending on price and, to some extent, the nature of the goods and the frequency of the purchase.

52. The average consumer of the goods at issue will be a member of the general public or a professional. With regard to this point, I am mindful of the decision in *Adelphoi Limited v DC Comics (a general partnership)*<sup>4</sup> in which Professor Annand, sitting as the Appointed Person stated:

*"21. As for the services, e.g., broadcasting, whilst I agree with Mr. Malynicz that the average consumer would include business consumers or professionals as well as the general public, the likelihood of confusion must be assessed in relation to the part of the public whose attention is lower (see e.g., Case T-448/11, *Golden Balls Ltd v. OHIM*, 16 September 2013, para. 26), although in any event, the Hearing Officer relied on an average consumer (reasonably well informed and reasonably circumspect and observant) paying an average level of attention (para. 41)."*

53. The purchase is likely to be primarily visual as it is likely to be made from a website, catalogue, or directly from a shelf. The specifications of goods cover a range of products which vary in price and frequency of purchase. Some kitchen knives e.g. boning knives can be very expensive and may be purchased for a specific purpose. Such a purchase is likely to be a relatively expensive and infrequent one. It will demand a higher level of attention to be paid than, for example, buying kitchen roll which is an everyday purchase.

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<sup>4</sup> *BL O/440/13*

## Comparison of goods

54. The goods to be compared are as follows:

The opponent's goods	The applicant's goods
<b>Class 21</b> Oven gloves, all included in class 21.	<b>Class 8</b> Cutlery; kitchen knives, can openers, knife sharpeners, pizza cutters, ice picks, meat choppers, nutcrackers, oyster openers, scissors, cheese slicers, spatulas, vegetable choppers, slicers and peelers.  <b>Class 16</b> Kitchen roll; paper towels  <b>Class 24</b> Textile goods not included in other classes; table linen; table cloths, table mats, table runners, napkins; towels; tea towels.  <b>Class 25</b> Clothing, footwear, headgear; aprons.

55. In comparing the goods, I bear in mind the following guidance provided by the General Court (GC) in *Gérard Meric v OHIM*, Case T-133/05:

“29. ...goods can be considered identical when the goods designated by the earlier mark are included in a more general category, designated by the trade mark application or when the goods designated by the trade mark application are included in a more general category designated by the earlier mark.”

56. Factors which may be considered include the criteria identified in *British Sugar Plc v James Robertson & Sons Limited (Treat)*<sup>5</sup> (hereafter *Treat*) for assessing similarity between goods and services:

- (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 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;

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<sup>5</sup>[1996] R.P.C. 281

(f) the extent to which the respective goods or services are competitive, taking into account how goods/services are classified in trade.

57. I also bear in mind the decision in *El Corte Inglés v OHIM Case T-420/03*, in which the court commented:

“96...goods or services which are complementary are those where 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 the production of those goods or provision of those services lies with the same undertaking (*Case T-169/03 Sergio Rossi v OHIM-Sissi Rossi* [2005] ECR II-685)”

58. I also bear in mind the comments of Daniel Alexander, sitting as the Appointed Person, in *LOVE*<sup>6</sup>, in which he said:

“18... the purpose of the test, taken as a whole, is to determine similarity of the respective goods in the specific context of trade mark law. 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.”

59. Where appropriate I will, for the purposes of comparison, group related goods together in accordance with the decision in *Separode Trade Mark*<sup>7</sup>:

“The determination must be made with reference to each of the different species of goods listed in the opposed application for registration; if and to the extent that the list includes goods which are sufficiently comparable to be assessable for registration in essentially the same way for essentially the same reasons, the decision taker may address them collectively in his or her decision.”

60. In respect of the opponent’s goods the applicant submits:

*“28. It is abundantly clear that there is no overlap in the classes between the Earlier Goods and the Application. Therefore, the Earlier Goods are not identical to the Goods and Services.*

*29. Further, the Earlier Goods contain the limitation ‘all included in Class 21’ as a suffix. This means that the registration only covers goods which can be correctly classified as goods in Class 21. Therefore, any goods which the Opponent claims are similar to goods in Class 21 but are in fact correctly classified in classes other than Class 21 cannot be considered identical or similar for the purposes of this opposition. The registration simply does not extend outside the scope of Class 21.”*

61. In *Proctor & Gamble Company v Simon Grogan*, Anna Carboni, sitting as the appointed person, referred to *Caremix*<sup>8</sup> and said:

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<sup>6</sup> *BL O/255/13*

<sup>7</sup> *BL O-399-10*

<sup>8</sup> *BLO-176-08*

“32. The International Classification system also applies to Community trade marks. Rule 2(4) of Commission Regulation 2868/95/EC implementing the Regulation on the Community trade mark (40/94) states as follows:

(4) The classification of goods and services shall serve exclusively administrative purposes. Therefore, goods and services may not be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification, and goods and services may not be regarded as being dissimilar from each other on the ground that they appear in different classes under the Nice Classification.

33. It is thus made plain under the Community trade mark system that class numbers are irrelevant to the question of similarity of goods and services.

34. There is no similarly plain provision in the Act or the Directive. The Court of Appeal has held that, although the purpose of classifying goods and services is primarily administrative, that does not mean that the class numbers in an application have to be totally ignored in deciding, as a matter of construction, what is covered by the specification: *Altecnic Ltd's Trade Mark Application (CAREMIX)*<sup>7</sup>. But neither the Court of Appeal, nor the ECJ, nor any other court or tribunal in the United Kingdom, has gone so far as to state that class numbers are determinative of the question of similarity of goods in the case of national trade marks. On the contrary, they are frequently ignored.”

62. I also bear in mind the decision of the General Court (GC) in *Sofia Golam v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)*<sup>9</sup> which refers to *P.P.TV - Publicidade de Portugal e Televisão, SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)*<sup>10</sup>, and states:

"35 That finding is not altered by the fact that the latter services appear on the alphabetical list for Class 41. The likelihood of confusion between services covered by different marks does not depend on the classification of those services under the Nice Agreement, but rather on the similarity between those services. In that regard, Rule 2(4) of Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Regulation No 40/94 (OJ 1995 L 303, p. 1) provides, moreover, that the classification of goods or services is to serve exclusively administrative purposes, so that goods or services may not be regarded as similar on the ground that they appear in the same class under the Nice Classification, and goods or services may not be regarded as dissimilar on the ground that they appear in different classes."

63. With regard to interpreting terms in specifications, I will bear in mind the guidance provided in *Treat*:

“In ‘construing a word used in a trade mark specification, one is concerned with how the product is, as a practical matter, regarded for the purposes of trade’. Words should be given their natural meaning within the context in which they are used; they cannot be given an unnaturally narrow meaning.”

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<sup>9</sup> T-486/12

<sup>10</sup> T-118/07



64. In *Beautimatic International Ltd v Mitchell International Pharmaceuticals Ltd and Another*<sup>11</sup>, when 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.”

65. And in *YouView TV Ltd v Total Ltd* when<sup>12</sup> Floyd J said:

“... 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.”

## **Classes 8 and 16**

66. With regard to the applicant's goods in classes 8 and 16 the opponent submits:

*“20. All of the goods specified in classes 8 and 16 above are used in the kitchen for the preparation of food. All of the goods covered by the registration are used in the preparation of food. The goods in classes 8 and 16 and those of the registration are therefore used in combination and are complementary. Given this, all of the specified goods in classes 8 and 16 are similar to the goods covered by the Registration.”*

## Class 8

67. The applicant submits:

*“31. It is submitted that cutlery (or any other goods in Class 8) do not have the same uses as an oven glove. Cutlery is used at the dining table to cut and serve food and oven gloves are used to carry hot things from the oven. The users are also different, as the cook will use the oven glove and the diner will use the cutlery. The physical nature of the goods is again different, one being made of metal such as silver or steel and the other made of fabric such as cotton. Given the difference in material it is obvious that the trade channels will be different and a manufacturer of cutlery is unlikely also to manufacture oven gloves. It is also obvious that the goods are not in competition with each other. It is admitted that the goods might appear in the same kitchen ware shop but they are unlikely to appear side-by-side or on adjacent shelves. Indeed none of*

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<sup>11</sup> [2000] F.S.R. 267 (HC)

<sup>12</sup> [2012] EWHC 3158 (Ch) at [12]

*the exhibits provided in the James McHugh witness statement shows cutlery (or any other goods in Class 8) being sold side-by-side with oven gloves.”*

68. I agree that cutlery does not have the same users and uses as an oven glove. Cutlery is used in the eating of food and is used by a diner, whether at a restaurant or other commercial premises or in a domestic setting. Cutlery must be made of hard material. The tines of a fork, the blade of a knife and the bowl of a spoon are usually made of metal, though hard plastics, wood and/or other suitable materials may be used. The handles may be made from a range of materials and may be plain or decorative. An oven glove is used by someone preparing food to protect their hands while placing food into, or removing it from, a hot oven or other heat source. It is a textile good which may be made from a range of (usually, heat resistant) materials. The trade channels for these goods are clearly different and they are neither complementary nor in competition with each other. These goods are dissimilar.

69. The remaining goods in class 8 of the application are hand held tools for use in the preparation of food. Consequently, the users of these goods and an oven glove may well be the same. However, since it is possible to use a vast array of products in the preparation of food, some of which are similar and some of which are not, I will keep in mind the comments of the Appointed Person in *LOVE* and will assess the similarity in the context of trade mark law. The remaining class 8 goods are implements made of hard materials and have (in many cases) a specific purpose, inter alia, slicing cheese, opening oysters, cutting pizza and chopping meat. As was the case with cutlery, the goods will be made from hard materials in order to carry out their specific functions. The trade channels for these goods will be different. Even if all of the parties' goods were to be found in a kitchenware shop they will not have arrived there by the same means, nor are they likely to be presented in close proximity. They are neither complementary nor in competition. These are dissimilar goods.

#### Class 16

70. The applicant submits:

*“33. The opponent claims that “kitchen roll; paper towels” are similar to “oven gloves”. Oven gloves are used to carry hot things from the oven: they are used by cooks and are made of textile materials such as cotton whereas “kitchen roll; paper towels” are used to clean and mop spills. They are made of absorbent paper. The goods are not in competition with each other, will have different trade channels, will be made by different companies and will be found on different aisles of the supermarket. Indeed none of the exhibits provided in the James McHugh witness statement show goods in Class 16 being sold side-by-side with oven gloves. The goods are not similar.”*

71. Kitchen roll will usually, though not always, be used in a kitchen. Paper towels have many uses beyond use in the kitchen. They will generally be used to, inter alia, clean, clear up spillages, wipe a person's hands, grease tins, oil pans or soak up fat from food. Kitchen towels and paper towels are made from paper and are designed to be disposable. Oven gloves may be made from a range of textile materials and have far greater longevity than the applicant's class 16 goods. An oven glove is used by someone preparing food to protect their hands while placing food into, or removing it from, a hot oven or other heat source. The trade channels for these goods will be different and they are highly unlikely to be displayed in proximity to each other, even if they are made available through the same

retail outlet, website or catalogue. These goods are not in competition nor are they complementary. These are dissimilar goods.

## **Classes 24 and 25**

71. With regard to the applicant's goods in classes 24 and 25 the opponent submits:

*21. Exhibit JM1 shows that "tea towels", "oven gloves", "napkins", "table cloths" and "aprons" are sold through the same distribution channels and share the same point of sale. The extract from the Tesco website shows that tea towels, oven gloves and aprons are sold in sets. These goods are therefore complementary. It is submitted that "Oven gloves" covered by the Registration are similar to "table linen, table cloths, napkins and tea towels" in class 24 and 'aprons' in class 25.*

*22. Since "Clothing" can be deemed to cover "aprons", "Clothing" is also similar to "oven gloves". The same applies to the general "tea towels".*

## Class 24

72. The applicant submits:

*"34. The Opponent claims that all of the goods in class 24 of the Application are similar to 'oven gloves'. Oven gloves are used to carry hot things from the oven, they are used by cooks and are made of textile materials such as cotton, whereas table linen (including table mats, table runners and napkins) are used at the dining table primarily for decoration, are used by diners and will not necessarily be made of the same textile material. The goods are clearly not in competition with each other as you would not place an oven glove on show at the dining table. There is also a clear distinction between towels and tea cloths and oven gloves. Towels and tea cloths are used to dry crockery and cutlery. These goods are not in competition with one another as a user would not use an oven glove to dry a wine glass for example. The opponent has submitted extracts from websites of various online retailers. These do not show that the goods have the same trade channels and it is not necessarily the case that the goods will be sold side-by-side in the supermarket or even in the same aisle. The fact that Tesco sells two types of good, or has an algorithm that brings them up in a search, is irrelevant."*

73. The applicant's goods in class 24 divide into two categories. Table linen, table cloths, table mats, table runners and napkins are all goods which will be used to decorate or dress a dining table. In addition, napkins and table cloths may also be used to protect from spillages. These goods will be used by the person setting the table and the diners themselves. An oven glove will be used by a person preparing food to protect their hands while placing food into, or removing it from, a hot oven or other heat source. While all of these goods may be made from textiles, and may have a decorative element, an oven glove is a functional item, whereas the other goods are likely to be chosen purely for their decorative qualities. The trade channels are likely to be different and they are unlikely to be displayed on adjacent shelves or areas of a catalogue or website. They are not complementary nor are they in competition. These are dissimilar goods.

74. The applicant's remaining goods in this class, namely towels and tea towels, fall into a different category to those discussed above. The users of tea towels may be the same as

the users of oven gloves, those preparing food and working in a kitchen. The uses are different. An oven glove is used to protect the user from heat while a tea towel would be used for drying crockery and cutlery. The opponent has put in evidence several examples of sets which include oven gloves and tea towels. While this is not, of itself, proof that the trade channels for these goods are the same, as many items which are completely unrelated are sold in sets, it is true to say that both types of goods are textile goods which can be made of similar materials, have a functional purpose and are likely to be found in the kitchen in fairly close proximity. There may also be an overlap between the trade channels for these goods. The goods are not complementary, nor are they in competition. There is a degree of similarity between these goods, though it is at a fairly low level.

75. With regard to towels, these are easily distinguished from tea towels. The evidence provided by the opponent shows no examples of towels and oven gloves sold in sets (not that such evidence would be conclusive proof of similarity in any case). The natural meaning of the word 'towels' in the application will be towels of the type generally used to dry (parts of) the body rather than kitchen goods and are likely to reach the market by trade channels which differ from those used for oven gloves. Even where a towel is kept in the kitchen it will be to dry a person's hands rather than to dry, inter alia, crockery, cutlery, glasswear. Even if towels and oven gloves were to be available at the same retail outlet, they are unlikely to be sold in the same areas or on adjacent shelves. In my experience towels would be sold in a household area, often near bathroom products. When seeking to purchase the goods from a website they would not be sold under the same headings or be made available in the same area of the website. An average consumer seeking to purchase a tea towel would not begin by looking for towels as the broad heading. The goods are not complementary, nor are they in competition. In the absence of evidence or submissions from the parties' on this point, in my view tea towels are a separate category of goods from towels and are not a sub category of those goods. For all of the reasons provided above, towels are dissimilar to oven gloves.

#### Class 25

76. The applicant submits:

*"35. The opponent claims that aprons and oven gloves are similar. Aprons are used to prevent splashes and stains on the cook's clothes whilst cooking. The goods are not in competition with each other as the cook could not wear an oven glove in order to be protected against splashes and stains on the body. The Opponent has submitted extracts from websites of various online retailers. These do not show that the goods have the same trade channels and it is not necessarily the case that the goods will be sold side-by-side in the supermarket or even in the same aisle.*

*36. Finally, the Opponent claims that "clothing" and "oven gloves" are similar. Clothing is worn by everyone and not just cooks. Clothing is used for warmth and to protect modesty whi[l]st oven gloves are used purely to carry hot food from the oven. The trade channels are dissimilar and the goods are not in competition. Whilst the goods could potentially be made of the same material, more often than not, they will not be made of the same materials. Clothing can be made of various materials such as Nylon (which would cause damage to the skin if burnt) or leather whereas oven gloves must be made of fire resistant materials."*

77. The applicant's goods in this class are clothing, footwear, headgear and aprons. I have no submissions from either party in respect of footwear or headgear and their similarity to oven gloves. Having considered the nature of the goods, their intended purpose, their method of use and whether they are in competition with each other or are complementary, I can find no meaningful areas in which footwear and headgear coincide with the opponent's goods.

78. In the case of aprons, the users may be the same, namely those preparing food and working in a kitchen. The uses are different to the extent that an apron is used to protect clothes from spills and cooking stains whereas an oven glove is used to protect the user's hands from heat. However, both types of goods are bought primarily for their function which is a practical one. The opponent has put in evidence several examples of sets which include oven gloves and aprons. While this is not, of itself, proof that the trade channels for these goods are the same, as many items which are completely unrelated are sold in sets, it is true to say that both types of goods are textile goods which can be made of similar materials, have a functional purpose and are likely to be used in the kitchen in fairly close proximity. There may also be an overlap between the trade channels for these goods. The goods are not complementary, nor are they in competition. There is a degree of similarity between these goods, though it is at a fairly low level.

79. To the extent that clothing includes aprons then these items of clothing can be considered to have a degree of similarity to the applicant's oven gloves, as I have already found in paragraph 76. However, it is a non sequitur to conclude from that finding that oven gloves are similar to all types of clothing. The majority of items of clothing are bought primarily for their appearance rather than for a functional purpose and would require consideration of the type of material, colour, size and fit. The same cannot be said of oven gloves. While it is true to say that some average consumers may select an oven glove according to its appearance, for example, to match a kitchen colour scheme, the primary purpose of the goods is to protect the user from heat. The shape and size of the oven glove will be fairly standard and the materials from which it has been constructed will be determined to a large extent by its primary function. The trade channels for most items of clothing and oven gloves will be different. These goods are not in competition and are not complementary. With the exception of aprons, these are dissimilar goods.

80. In making this finding I have considered the types of clothing which may be worn in a kitchen, such as 'chef's whites'. Even though these may have a functional purpose they may well still be purchased with appearance being an important part of the selection process and will allow a degree of freedom in colours, types of material, fit, fashion and so on. These goods are unlikely to be displayed in close proximity and are not complementary nor in competition. These goods are also dissimilar to the applicant's 'oven gloves'.

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

81. In determining the distinctive character of a trade mark and, accordingly, in assessing whether it is highly distinctive, it is necessary to make an overall assessment of the greater or lesser capacity of the trade mark to identify the goods for which it has been used as coming from a particular undertaking and thus to distinguish those goods from those of other undertakings - *Windsurfing Chiemsee v Huber and Attenberger Joined Cases C-108/97 and C-109/97* [1999] ETMR 585.

82. In respect of the opponent's oven gloves, the word 'chef' serves to describe a user of the goods. The word 'master' before the word 'chef' simply describes the user's expertise. Consequently, the mark has a low degree of inherent distinctive character.

83. This is a case where evidence of use was required, however, given my findings above with regard to this evidence, I am unable to conclude that the opponent's earlier mark has enhanced its distinctive character due to the use made of it.

### **Likelihood of confusion**

84. In assessing the likelihood of confusion, I must adopt the global approach advocated by case law and take into account the fact that marks are rarely recalled perfectly, the consumer relying instead on the imperfect picture of them he has kept in his mind.<sup>13</sup> I must also keep in mind the average consumer for the goods, the nature of the purchasing process and have regard to 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.

85. I have found the parties' marks to be identical. I have found the earlier mark to have a low degree of inherent distinctive character for the opponent's goods in class 21, namely 'oven gloves'. I have identified the average consumer, namely a member of the general public or a business and have concluded that the degree of attention paid is likely to vary according to, inter alia, the type of goods, cost, purpose, frequency of purchase. I have identified a low degree of similarity between the oven gloves in the opponent's specification and tea towels in class 24 and aprons in class 25 of the applicant's specification.

86. It is well established<sup>14</sup> that the more distinctive the earlier trade mark the greater the likelihood of confusion will be. In *The European Limited v The Economist Newspaper Ltd* [1998] FSR 283 Millett LJ commented upon the logical conclusion of this proposition:

"The more distinctive the earlier mark, the greater will be the likelihood of confusion. The converse, of course, follows. The more descriptive and the less distinctive the major feature of the mark, the less the likelihood of confusion."

87. However, in relation to the limited distinctiveness of an earlier trade mark the judgment of the CJEU in *L'Oréal SA v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)* Case C-235/05 P is pertinent:

"45 The applicant's approach would have the effect of disregarding the notion of the similarity of the marks in favour of one based on the distinctive character of the earlier mark, which would then be given undue importance. The result would be that where the earlier mark is only of weak distinctive character a likelihood of confusion would exist only where there was a complete reproduction of that mark by the mark applied for, whatever the degree of similarity between the marks in question. If that were the case, it would be possible to register a complex mark, one of the elements of which was identical with or similar to those of an earlier mark with a weak distinctive character, even where the other elements of that complex mark were still less

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<sup>13</sup> *Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V* paragraph 27

<sup>14</sup> *Sabel v Puma*

distinctive than the common element and notwithstanding a likelihood that consumers would believe that the slight difference between the signs reflected a variation in the nature of the products or stemmed from marketing considerations and not that that difference denoted goods from different traders.”

88. In this case the marks are identical. Even taking into account the low level of distinctive character present in the earlier mark, where I have found there to be any similarity between the goods, there will be a likelihood of direct confusion, where the average consumer mistakes one mark for the other.

## **CONCLUSION**

**89. The opposition fails under section 5(1) of the act.**

**90. The opposition fails under section 5(2)(a) of the Act other than in respect of ‘tea towels’ in class 24 of the application and ‘aprons’ in class 25 of the application.**

**91. The application can proceed to registration for the following goods and services:**

### **Class 8**

Cutlery; kitchen knives, can openers, knife sharpeners, pizza cutters, ice picks, meat choppers, nutcrackers, oyster openers, scissors, cheese slicers, spatulas, vegetable choppers, slicers and peelers.

### **Class 9**

Computer games equipment adapted for use with an external display screen or monitor; digital music.

### **Class 16**

Magazines; photographs; posters; pens; pencils; stationery items; kitchen roll; paper towels

### **Class 24**

Textile goods not included in other classes, excluding tea towels; table linen; table cloths, table mats, table runners, napkins; towels.

### **Class 25**

Clothing, excluding aprons; footwear; headgear.

### **Class 28**

Toys, games, playthings; games machines; coin operated games machines

### **Class 41**

The production, presentation and distribution of television programs; entertainment services, namely, a television series in the reality genre in the field of cooking and food; publishing of web magazines; production and presentation of competitions, games and studio entertainment.

### **Class 43**

Provision of temporary accommodation.

## **COSTS**

92. The opposition having failed for all of the goods with the exception of tea towels and aprons, the applicant, is entitled to a contribution towards its costs, adjusted to take account of the goods for which the opposition has succeeded. I note that in its submissions, dated 10 December 2013, the applicant *'requests a full award of costs in its favour'*. Having considered all of the papers before me I cannot see any reason for awarding costs in excess of the Comptroller's scale of costs. I make the award on the following basis:

Preparing a statement and considering the other side's statement:	£200
Preparing and filing submissions:	£300
Total:	£500

93. I order Vale Mill (Rochdale) Limited to pay Shine Limited the sum of £500. This sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

**Dated this 18<sup>th</sup> day of June 2014**

**Ms AI Skilton  
For the Registrar,  
The Comptroller General**