

O-339-18

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 3218068
BY THE PIG & PALLET LIMITED TO REGISTER:**



AS A TRADE MARK IN CLASSES: 29, 30, 35, 39, 42 & 43

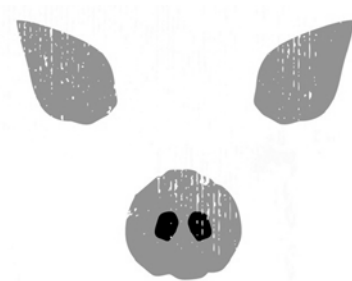
AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 409277 BY THE JOLLY HOG LIMITED**

BACKGROUND & PLEADINGS

1. On 12 March 2017, Steve Williams applied to register the trade mark shown on the cover page of this decision for the goods and services shown in paragraph 23 below. The application was published for opposition purposes on 31 March 2017. On 7 June 2017, the trade mark the subject of the application was assigned from Mr Williams to The Pig & Pallet Limited (“the applicant”). As nothing appears to turn on this assignment, I need say no more about it in this decision.

2. The application has been opposed in full by The Jolly Hog Limited (“the opponent”). The opposition is based upon sections 5(2)(b) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”). In relation to the objection based upon section 5(2)(b) of the Act, the opponent relies upon United Kingdom registration No. 3092549 for the trade mark shown below, which was applied for on 3 February 2015 and which was entered in the register on 24 April 2015. The opponent indicates that it relies upon the goods and services shown in paragraph 23 below:



3. The opponent states that its trade mark:

“...is a highly distinctive representation of a pig’s snout and ears. The applied for mark is made up of a few elements, including a highly distinctive representation of a pig’s snout and ears. This element performs an independent and distinctive role in the applied for mark. As such, the overall impression created by the applied for mark is similar to that created by the opponent’s protected mark.

Some of the applied for goods and services are identical to those protected by the opponent's trade mark registration. For those goods and services that are not identical, they are similar, on the basis that they are the same in respect of their nature, intended purpose, method of use, are complementary, are in competition, share the same distribution channels, end user and relevant public."

4. In relation to its claim based upon section 5(4)(a) of the Act, the opponent relies upon the same trade mark shown above. The opponent states that it "has extensively used its mark throughout the United Kingdom since January 2015" in relation to "sausages, bacon, food and drink services, catering services, restaurant services." As a consequence of this use, it states that (i) it has acquired "a very substantial reputation and goodwill", (ii) the applicant's trade mark "misrepresents that the applicant's goods and services are in some way connected, associated or affiliated with, or endorsed by the opponent" and (iii) such misrepresentation "is likely to cause damage to the opponent in the form of loss of custom, loss of ability to control its reputation for quality and loss of monopoly owing to dilution."

5. The applicant filed a counterstatement which consists, in essence, of a denial of the grounds upon which the opposition is based.

6. In these proceedings, the opponent is represented by Wynne-Jones, Laine & James LLP and the applicant by WBW Solicitors LLP. Both parties filed witness statements during the course of the evidence rounds. While the opponent's statement contained evidence, the applicant's statement (from its director, Stephen Williams), consisted exclusively of submissions. Although neither party asked to be heard, both elected to file written submissions in lieu of attendance at a hearing. I shall refer to these submissions, as necessary, later in this decision.

DECISION

7. The opposition is based upon sections 5(2)(b) and 5(4)(a) of the Act which read as follows:

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

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

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

“(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented -

(a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, or

(b) by virtue of an earlier right other than those referred to in subsections (1) to (3) or paragraph (a) above, in particular by virtue of the law of copyright, design right or registered designs.

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of an “earlier right” in relation to the trade mark.”

8. An earlier trade mark is defined in section 6 of the Act, which states:

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

(a) a registered trade mark, international trade mark (UK), 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.”

9. Under section 5(2)(b) of the Act, the opponent is relying upon the UK trade mark shown in paragraph 2 above, which qualifies as an earlier trade mark under the above provisions. In its counterstatement, the applicant states “it is of vital importance to note that the opponent does not use [the trade mark upon which it relies] on its own, but rather as part of the composite image [the subject of a different trade mark registration owned by the opponent]” and it provides sample packaging in support of that claim. However, as the earlier trade mark upon which the opponent relies had not been registered for more than five years at the date the application was published, it is not subject to the proof of use provisions contained in section 6A of the Act. In those circumstances, the opponent is entitled to rely upon it without having to demonstrate genuine use. As a consequence, what I must do is compare the competing trade marks on the basis of fair and notional use.

The opponent’s evidence

10. This comes from its co-founder and director, Maxim Julius Kohn and is dated 9 October 2017. Mr Kohn explains that the opponent has three divisions i.e. (i) retail, (ii) concession stands and (iii) the Pigsty restaurant.

11. In relation to (i) above, Mr Kohn explains that the trade mark is affixed to the packaging of “every single pack of sausages and bacon that [the opponent] sells”,

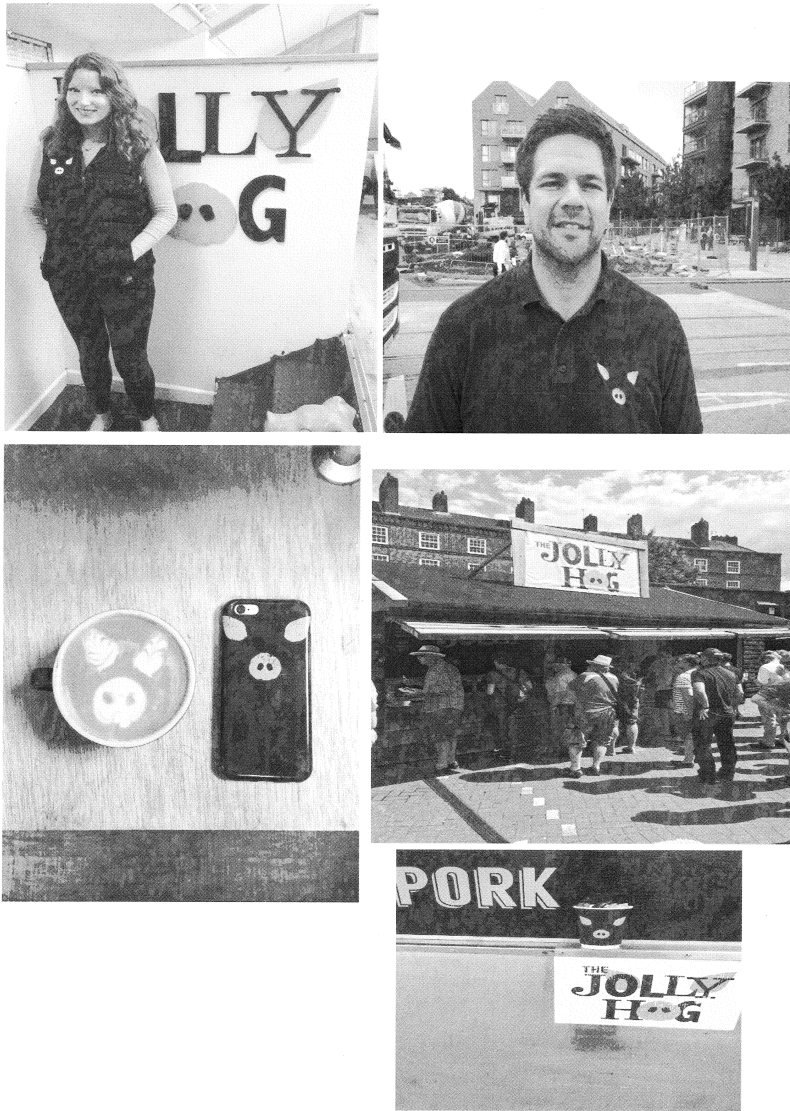
adding that such products have been “sold extensively” through three of the largest retailers in the United Kingdom i.e. Ocado, Sainsbury’s and Morrisons. Exhibit One, consists of undated photographs of the opponent’s products on the shelves of Sainsbury’s and a screen print from the Ocado website dated September 2017 (i.e. after the relevant date). The opponent’s packaging looks like this:

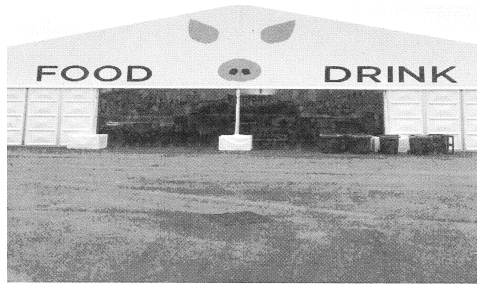


12. Mr Kohn adds that packs of the opponent’s sausages have been available in Ocado since September 2015, Sainsbury’s since March 2016 and Morrison’s since September 2016. Packs of the opponent’s bacon have, he states, been available in Ocado since February 2016 and in Sainsbury’s since February 2017. In the period 2015 to March 2017, 358,000 and 252,000 packs of sausage and bacon respectively have been sold in the United Kingdom.

13. Insofar as (ii) above is concerned, Mr Kohn states the trade mark is widely displayed at all the opponent’s concession stands at a variety of entertainment venues i.e. The Oval Cricket Ground, Winter Wonderland in Hyde Park, Harlequin F.C., Tough Mudder, Cheltenham Racecourse, Glastonbury Festival and Silverstone. He adds that not only has the trade mark been applied to the concession stands at these venues but it has

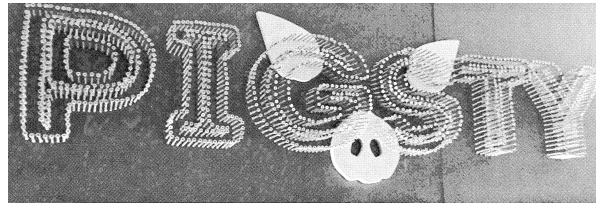
also appeared on staff uniforms and “various other accessories” such as disposable cups. Exhibit Two consists of what appears to be undated photographs of the trade mark appearing on, inter alia, the items to which Mr Kohn refers. Some examples look like this:





14. Although Mr Kohn explains that approximately 440,000 customers have visited the opponent's concession stands, it is not clear to what period these figures relate.

15. Finally, in relation to the opponent's "Pigsty Restaurant", Mr Kohn states that the trade mark is prominently displayed within the restaurant and on the windows of the restaurant. Exhibit Three consists of what again appears to be undated photographs. The trade mark appears on coffee cups, on wrapping for foodstuffs and in the following manner.



16. Mr Kohn estimates that 35,000 people per year have visited the opponent's "Pigsty Restaurant", but it is not clear when the trade mark was first used in relation to such services.

17. Turnover in relation to the opponent's retail/concession business has, states Mr Kohn, been as follows: 2013/14 - £474k, 2014/15 - £858k, £2015/16 - £1.280m and 2016/17 (forecast) - £1.4m. In the period 2016/17, the opponent's restaurant services generated turnover of £375k.

18. Mr Kohn explains that the opponent's business has featured in newspapers and magazines. Exhibit four consists of extracts obtained from *The Metro* (11 November 2013), *The Grocer* (January 10 – year unknown but which I assume to be 2017), *Casual Dining* (February 2017), *Gloucestershire Echo*, *Gloucester Citizen* (6 February 2017) and *Delicious Magazine* (1 March 2017). Although a number of the articles provided are either so small or so indistinct to be of assistance, in the article from *The Grocer*, it states:

“Premium pork brand The Jolly Hog...The Bristol brand – established eight years ago by ex-Wales rugby international Olly Kohn and his brothers Max and Josh – has secured listings in 184 Sainsbury' stores from 25 January for its 200g packs of double smoked cured back bacon...”

19. Mr Kohn states a “considerable portion of [the opponent's] marketing is conducted via social media”. The opponent's Facebook page has been liked by 2500 people and its Twitter account is followed by nearly 4,500 people. Mr Kohn adds that “the bulk of our brand's exposure via social media is the result of prominent endorsers and celebrity ambassadors such as Michael Roux Jr, Monica Galletti, Eric Lanlard, Lewis Moody, Joe Marler, Danny Care and David Flatman.” He states that having such celebrities and endorsers in its social media content ensures that the opponent's brand is exposed to both its own followers and those of the individuals concerned. As an example, Mr Kohn explains that when Michael Roux Jr re-tweets the opponent's content on his Twitter account, it is exposed to his 316k followers, adding that one of the opponent's videos was shown on the Twisted Food Facebook page and received 1.1m views. Exhibit Five consists of a range of Tweets in support of the above, the earliest of which is, as far as I can tell, from 2013.

20. Mr Kohn states that the opponent has spent the following amounts on marketing: 2014/15 - £20k, 2015/16 - £100k, 2016/17 - £150k. I note that the opponent has been nominated for or won the following awards:

August 2016 – won the Great Taste awards for retail sausages;

1 November 2016 – bronze and silver in the National Sausage Awards for its retail products;

August 2017 – won Great Taste awards for sausages and bacon;

2017 – shortlisted for the Great British Foods Awards 2017;

Date not provided - Won the best casual dining award at the Foozie Awards for its Pigsty restaurant.

21. That concludes my summary of the evidence provided to the extent that I consider it necessary.

Section 5(2)(b) – case law

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

The principles:

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

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

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

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

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

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

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

<p>Class 43 - Services for providing food and drink; restaurant, bar and catering services; information, consultancy and advice in relation to the foregoing services.</p>	<p>pizzas; Sauces containing nuts; Sauces for use with pasta; Sauces for pasta; Sauces flavoured with nuts; Sauces for ice cream; Sauces for rice; Cooking sauces; Sauces for frozen fish; Sauces for chicken; Sauces [condiments];Spice rubs; Hot dogs [sausages in a bread roll]; Burgers contained in bread rolls; Hot dogs [sausages in a bread roll]; Hotdogs being cooked sausages in bread rolls; Spice rubs; Sauces for barbecued meat; Sauces; Sauces for food; Sauces for pizzas; Sauces containing nuts; Sauces for use with pasta; Sauces for pasta; Sauces flavoured with nuts; Sauces for ice cream; Sauces for rice; Sauces for frozen fish; Sauces for chicken; Sauces [condiments];Savory sauces; Burgers contained in bread rolls.</p> <p>Class 35 - Restaurant management for others; Restaurant management for others.</p> <p>Class 39 - Delivery of food by restaurants; Delivery of food by restaurants.</p> <p>Class 42 - Design services in relation to restaurants; Design of restaurants.</p> <p>Class 43 - Restaurant services incorporating licensed bar facilities; Restaurant services provided by hotels; Hotel restaurant services; Carvery restaurant services; Carry-out restaurants; Restaurant services; Restaurants; Restaurant reservation services; Grill restaurants; Delicatessens [restaurants];Restaurant information services; Restaurants (Self-service -);Restaurant services incorporating licensed bar facilities; Restaurant services</p>
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	provided by hotels; Hotel restaurant services; Carvery restaurant services; Take-out restaurant services; Carry-out restaurants; Restaurant services; Restaurants; Provision of food and drink in restaurants; Restaurant reservation services; Grill restaurants; Delicatessens [restaurants]; Restaurant information services; Self-service restaurant services; Restaurants (Self-service -); Self-service restaurants.
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24. In its Notice of opposition, the opponent claims that the competing goods are identical or similar and in its written submissions filed in lieu of a hearing it explains why it considers that to be the case. The applicant, however, has not commented upon this aspect of the case. Regardless, I do not think it appropriate to consider the applicant's silence to be a tacit acceptance that it accepts the opponent's claims to be correct. I will, as a consequence, conduct a class-by-class analysis, by reference to the case law which follows.

25. 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 of its judgment:

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

26. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, for assessing similarity were:

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

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

"... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks)* (*IP TRANSLATOR*) [2012] ETMR 42 at [47]-[49]. Nevertheless the principle should not be taken too far. Treat was decided the way it was because the ordinary and natural, or core, meaning of 'dessert sauce' did not include jam, or because the ordinary and natural description of jam was not 'a dessert sauce'. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in

question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question."

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

"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."

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

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

30. 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.”

31. In *Les Éditions Albert René v OHIM*, Case T-336/03, the GC stated:

“61... The mere fact that a particular good is used as a part, element or component of another does not suffice in itself to show that the finished goods containing those components are similar since, in particular, their nature, intended purpose and the customers for those goods may be completely different.”

32. In *Gérard Meric v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* case T-133/05, the GC stated:

“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 the trade mark application (Case T-388/00 *Institut für Lernsysteme v OHIM – Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or when the goods designated by the trade mark application are included in a more general category designated by the earlier mark (Case T-104/01 *Oberhauser v OHIM – Petit Liberto (Fifties)* [2002] ECR II-4359, paragraphs 32 and 33; Case T-110/01 *Vedial v OHIM – France Distribution (HUBERT)* [2002] ECR II-5275, paragraphs 43 and 44; and Case T-10/03 *Koubi v OHIM – Flabesa (CONFORFLEX)* [2004] ECR II-719, paragraphs 41 and 42).”

33. In *Avnet Incorporated v Isoact Limited*, [1998] F.S.R. 16, Jacob J. (as he then was) stated:

“In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase.”

Class 29

34. The opponent’s specification includes the term “sausages” which is literally identical to the same term in the application. In addition, the term “sausages” in the opponent’s specification is broad enough to include the goods shown below which are, as a consequence, to be regarded as identical on the *Meric* principle:

Preserved sausages; Cured sausages; Hotdog sausages; Hot dog sausages;
Smoked sausages; Uncooked sausages.

35. The opponent’s specification includes the term “meat burgers” which is literally identical to the same term in the application and an alternative way of describing “Meat products being in the form of burgers” in the application. As “Burgers” in the application would include, for example, “meat burgers” in the opponent’s specification, such goods are, once again, to be regarded as identical on the principle outlined in *Meric*.

Class 30

36. The opponent’s specification includes “sauces (condiments)” which is literally identical to the equivalent term in the applicant’s specification and broad enough to include the following goods in the application which are, once again, to be regarded as identical on the *Meric* principle:

Sauces for barbecued meat; Sauces; Sauces for food; Sauces for pizzas;
Sauces containing nuts; Sauces for use with pasta; Sauces for pasta; Sauces
flavoured with nuts; Sauces for ice cream; Sauces for rice; Cooking sauces;
Sauces for frozen fish; Sauces for chicken; Savory sauces.

37. Although the physical nature of “Spice rubs” in the application is different to the opponent’s “sauces (condiments)”, their intended purposes are the same (i.e. to flavour food). In addition, the respective goods have the same average consumer, are likely to be stored in relatively close proximity in, for example, a supermarket and as the average consumer can elect to purchase either a sauce or spice rub to flavour their food, there is also a competitive relationship between such goods. Considered overall, there is a high degree of similarity between the opponent’s named goods and the applicant’s “spice rubs”.

38. That leaves the following goods in the application to consider:

Hot dogs [sausages in a bread roll]; Burgers contained in bread rolls; Hotdogs being cooked sausages in bread rolls.

39. In its written submissions, the opponent argues that the above goods are “highly similar” to its goods in classes 29 and 30 because “they are the same in respect of their nature, intended purpose, method of use, distribution channels and end user”. The competing goods are also, claims the opponent, complementary. The opponent provides various submissions as to why it considers its “sausage rolls” to be similar to the applicant’s above named goods including, inter alia, they are respectively sausages/burgers contained in bread rolls as opposed to sausages contained in pastry, they are typically eaten by hand, “are likely be ordered or purchased at delicatessens, pubs, restaurants and retailers” and are, as a consequence, in competition with one another. Notwithstanding those submissions, in my view, the opponent’s better case lies with its sausages and meat burgers in class 29. Without a sausage/meat burger in class 29 there would be no hot dog/burger in class 30. There is, in my view, a symbiotic relationship between such goods leading to a low to medium degree of similarity between them.

40. As the opponent only relies upon its services in class 43 to oppose the applicant's services in classes 35, 39, 42 and 43, I begin by reminding myself of the comments of Jacob J in *Avnet* i.e. that "specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase."

Class 35

41. The applicant's specification reads "Restaurant management for others." In its submissions, the opponent states the applicant's services in this class are similar to its services because:

"17.5...the class 35 services are likely to originate from the same commercial undertaking that offers the class 43 services."

42. The applicant's services are directed at the management of restaurants for third parties, whereas the opponent's services relate to "services for providing food and drink" and "restaurant, bar and catering services". The management of restaurants for others is, in my view, a specialist service which is most often provided by specialist undertakings to, for example, business users such as the opponent, whereas the opponent's services are most likely to be provided to the general public including its own customers. Insofar as the opponent's specification also includes "information, consultancy and advice in relation to the foregoing services" (including restaurants) – such information etc. is, once again, most likely to be directed at the general public and its own customers. The opponent states that the competing services are likely to originate from the same commercial undertakings. It has, however, provided no evidence in support of this claim.

43. Applying the guidance in *Avnet*, the opponent's services are, in my view, different in, inter alia, nature, intended purpose, and target different users to the applicant's services. The competing services are clearly not in competition with one another nor, in

my view, is there complementarity in the sense outlined in the case law. Considered overall, there is, in my view, no meaningful degree of similarity between the applicant's services in class 35 and the opponent's services in class 43. I will return to this point later in my decision.

Class 39

44. The applicant's specification reads "Delivery of food by restaurants". In its submissions, the opponent states the applicant's services in this class are similar to its services to a high degree because:

"17.6...When offering services for providing food and drink, restaurants will typically offer a take away service or a home delivery service. These services allow customers who would like to experience restaurant standard meals in their own homes to do so. As such, they are the same in respect of their intended purpose and end user. They are also in competition in that consumers will select between a home delivery service, eating in a restaurant or collecting their meal from the restaurant before taking it home. Restaurants may also outsource the home delivery of their food to third parties, meaning that these services are, at the very least, complementary."

45. The opponent's submissions are, in my view, unlikely to be contentious and accord with my own experience and, more importantly will, I am satisfied, accord with that of the average consumer. In my view, the competing services are complementary and, as a consequence, similar to a medium degree.

Class 42

46. The applicant's specification reads "Design services in relation to restaurants; Design of restaurants." The opponent's submissions in paragraph 41 above refer.

47. My comments in relation to class 35 apply with equal force to the services in this class as is the conclusion I reach. Like class 35, I will return to this point below.

Class 43

48. The opponent's specification in this class includes "restaurant...services" which is identical to the equivalent term in the applicant's specification and broad enough to include the following services in the application which are, once again, to be regarded as identical on the *Meric* principle:

Restaurant services incorporating licensed bar facilities; Restaurant services provided by hotels; Hotel restaurant services; Carvery restaurant services; Carry-out restaurants; Restaurants; Grill restaurants; Delicatessens [restaurants]; Restaurants (Self-service -); Self-service restaurant services; Self-service restaurants; Take-out restaurant services; Provision of food and drink in restaurants.

49. In addition, as the applicant's "Restaurant information services" would be encompassed by the opponent's "information...in relation to the foregoing services" (which includes restaurant services), these services are also to be regarded as identical on the *Meric* principle. That leaves "Restaurant reservation services" to consider. In its submissions, the opponent states:

"17.8...However, these services are similar, to a high degree. The consumers of restaurant services will use restaurant reservation services to place their reservation. Therefore, these services are the same in respect of their end users and are complementary."

50. Although the provision of restaurant services will inevitably include as part of the service the opportunity to make a reservation, it is not, in my experience, provided as a separate identifiable service by the undertaking concerned but merely as an adjunct to

its principal activity. Simply contacting a restaurant to reserve a table does not constitute a reservation service. Such a service is likely, instead, to be provided by a third party to a restaurant provider, with the average consumer contacting the service provider to make a reservation which will be taken on the restaurant provider's behalf. However, notwithstanding the above, as the average consumer for both services will be the same, and as such an average consumer will, I think, identify a similarity in purpose, there is an element of complementarity leading, in my view, to a medium degree of similarity between the competing services.

The average consumer and the nature of the purchasing act

51. As the case law above indicates, it is necessary for me to determine who the average consumer is for those goods and services I have found to be identical or similar. I must then determine the manner in which these goods and services are likely to be selected by the average consumer in the course of trade. 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.”

52. The average consumer of the goods and services I have found to be identical or similar is a member of the general public. The goods in classes 29 and 30 are low cost everyday items which are most likely to be selected with a relatively low degree of care from the shelves of a bricks and mortar retail outlet or the equivalent pages of a

website. While visual considerations will, as a consequence, dominate the selection process, aural considerations in, for example, the form of requests to sales assistants must also be kept in mind.

53. Insofar as the delivery services in class 39 are concerned, these may either be provided as an adjunct to the restaurant service by the restaurant itself or will be provided by a third party on the restaurant's behalf. As the average consumer is most likely to select such services either on-line or by telephone when placing an order, a mixture of both visual and aural considerations will come into play. Given the likely low cost involved, I would expect the average consumer to pay a relatively low degree of attention to the selection of such services.

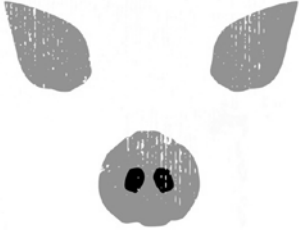

54. Finally, the services in class 43. My own experience informs me that the vast majority of the services at issue are most likely to be selected having considered, for example, promotional material and reviews (in hard copy and on-line) and on signage appearing on the high street; once again visual considerations will be an important part of the selection process. However, as such services are also, in my experience, very likely to be the subject of word-of-mouth recommendations, aural considerations will be a not-insignificant feature of the process. The degree of care the average consumer will display when selecting the services at issue is likely to vary. Contrast, for example, the low degree of care likely to be taken when one selects a venue for an impromptu cup of coffee, with the fairly high degree of attention one is likely to take when selecting a restaurant for an important family event. That leaves "restaurant reservation services" to consider. As such services are, in my experience, most likely to be selected online, visual considerations will, once again, dominate the selection process. As to the degree of care the average consumer will pay when selecting such services, as they are likely to be mindful of a range of factors such as the number of restaurants listed, ease of use etc, I would expect them to pay an average degree of attention during the selection process.

Comparison of trade marks

55. 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 them, 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.”

56. It would be wrong, therefore, artificially to dissect the trade marks, although it is necessary to take into account their distinctive and dominant components and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions they create. The trade marks to be compared are:

Opponent's trade mark	Applicant's trade mark
	

57. In reaching a conclusion on this aspect of the case, I shall take into account, but do not intend to record here, all of the parties' competing submissions.

58. The opponent's trade mark consists of what both parties agree will be construed as a device representing the snout and ears of a pig. That is an assessment with which I agree as, I am satisfied, will the average consumer; that is the overall impression the opponent's trade mark is likely to convey. I shall return to the distinctiveness of the opponent's trade mark below.

59. The applicant's trade mark consists of a number of components. The first, is a brown square which acts as a background upon which the other components, presented in white, appear. Although this brown square will make a contribution to the overall impression conveyed, it has very little, if any, distinctive character. The second component consists of what I am satisfied will be construed by the average consumer as a device representing a pig's snout and ears. Given its size and positioning at the top of the trade mark, it will make an important contribution to the overall impression conveyed. As above, I shall return to the distinctiveness of this component later in this decision. The third component consists of the words "THE PIG" below which appears the device of an ampersand below which appears the word "PALLET"; all three words are presented in block capital letters. Although these words have their own individual meanings, the average consumer's reaction to them will, in my view, be conditioned by their likely familiarity with similar combinations being used in the context of, for example, public house and restaurant services. As a consequence, they will, in my view, be perceived as a totality rather than by the individual words. Given the size of the words and their positioning in the centre of the trade mark, their contribution to the overall impression the trade mark conveys and its distinctiveness will be significant. The fourth component consists of what looks like devices of open and closed square brackets. These devices appear to the left and right of the word components of the trade mark and although they will make a not insignificant contribution to the overall impression conveyed, they are, I think, unlikely to possess a great deal of distinctive character. The fourth component, presented in much smaller block capital letters and appearing below the combination of words mentioned above, consists of the word "DEVON MADE" presented in block capital letters. Above and below these words there appears horizontal lines extending the length of the words. As these words will simply indicate to

the average consumer that the goods and services for which registration is sought are, for example, made in/originate from or are of a type associated with Devon, they have no distinctive character and will play little or no part in the overall impression conveyed. As the horizontal lines I have mentioned are likely to go largely unnoticed they too will play little or no part in the overall impression conveyed.

60. I shall now compare the competing trade marks from the visual, aural and conceptual standpoints keeping the above conclusions in mind. The competing trade marks either consist of or contain different stylised representations of a pig's snout and ears. However, the applicant's trade mark also includes the various components I have described above and, in particular, the distinctive combination "THE PIG & PALLET". Balancing the similarities and differences results in a low to medium degree of visual similarity between the competing trade marks.

61. Turning to the aural comparison, in its submissions, the opponent draws my attention to the comments of the GC in *Dosenbach-Ochsner AG Schuhe und Sport v OHIM*, T- 424/10 i.e.

"46. A figurative mark without word elements cannot, by definition, be pronounced. At the very most, its visual or conceptual content can be described orally. Such a description, however, necessarily coincides with either the visual perception or the conceptual perception of the mark in question. Consequently, it is not necessary to examine separately the phonetic perception of a figurative mark lacking word elements and to compare it with the phonetic perception of other marks."

62. In view of the above, it is not necessary for me to conduct an aural comparison.

63. Finally, the conceptual comparison. The opponent's trade mark will evoke the concept of a pig in the mind of the average consumer. The same concept will be evoked by the device component (which appears at the top of the applicant's trade mark); a

concept which will be reinforced by the presence of the word “PIG”. However, the applicant’s trade mark also includes the word “PALLET” which will evoke an additional concept alien to the opponent’s trade mark. Notwithstanding that additional concept, the competing trade marks remain conceptually similar to a fairly high degree.

Distinctive character of the earlier trade mark

64. The distinctive character of a trade mark can be appraised only, first, by reference to the goods and services in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public – *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91. 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 marks to identify the goods and services for which they have been registered as coming from a particular undertaking and thus to distinguish those goods and services from those of other undertakings - *Windsurfing Chiemsee v Huber and Attenberger* Joined Cases C-108/97 and C-109/97 [1999] ETMR 585.

65. In its counterstatement, the applicant states:

“The snout and ears of [the opponent’s trade mark] are not “highly distinctive” as the opponent has claimed and are simply a commonplace representation of a pig’s features.”

66. In its submissions the opponent states:

“11. It has been erroneously claimed by the applicant that [the opponent’s trade mark] is for a commonplace mark that is of limited distinctive character...but for now, the office should note that the applicant has failed to file any evidence in support of its contention that the mark is commonly used...”

And:

“19. It is important to note that the opponent's trade mark stands as registered and must be considered as being inherently distinctive. The way in which the opponent has represented a pig's snout and ears without the rest of the face is unusual which, in turn, renders it highly distinctive. Notwithstanding the inherent distinctiveness of the trade mark, the opponent has proven that it has obtained an enhanced degree of distinctive character in the United Kingdom. This is because of the extensive use that the opponent has made of the mark...”

67. I will consider first the inherent distinctiveness of the opponent's trade mark. In this regard and as the opponent correctly points out, the applicant has filed no evidence to support its assertion that the device of a snout and ears are “a commonplace representation of a pig's features.” However, and notwithstanding the absence of the rest of the face (upon which the opponent places some importance), the opponent accepts that its trade mark will be conceptualised by the average consumer as a device of a pig's snout and ears. Considered on that basis in the context of the goods in class 29 (all of which could be or include pork), class 30 (which would include sauces and condiments particularly suited for use with pork and sausage rolls which would include pork) or, inter alia, services for providing food and restaurant and catering services in class 43 (all of which may focus on pork as a principal ingredient), any inherent distinctive character the opponent's trade mark may enjoy is, in my view, low.

68. That, of course, is not the end of the matter as the opponent has filed evidence to support a request for enhanced distinctive character through use. I begin by noting that in his statement, Mr Williams, states:

“2...I do not dispute that the opponent has enjoyed some success with its products, restaurants and its other activities...”

69. In summary, packs of the opponent's sausages and bacon have been sold through three significant national retailers since as early as September 2015. In the period 2015 to March 2017, 358k and 252k packs of sausage and bacon respectively have been sold. Although Mr Kohn states that 440k customers have visited the opponent's concessions stands, it is not clear to what period these figures relate as the photographs provided as exhibit two are undated. That said, exhibit five contains a photograph of one of the opponent's concession stands from May 2013. Although no split is provided, turnover in relation to the opponent's retail/concession stand business amounted to some £4m in the period 2013 to March 2017. Insofar as the final strand of the opponent's business is concerned i.e. the Pigsty restaurant, although Mr Kohn estimates that 35k customers per year have visited the restaurant, he does not state when the trade mark was first used in relation to such services and the photographs provided as exhibit three are undated. I do, however, note that in the period 2016/17, turnover in relation to such services amounted to some £375k. In the period 2014 to March 2017, the opponent spent £270k on marketing with Mr Kohn explaining that a considerable portion of the opponent's marketing is conducted via social media with the opponent's Facebook liked by 2500 people and its Twitter account followed by 4500 people. In addition, the fact that the opponent is able to take advantage of prominent endorsers and celebrity ambassadors (of the type mentioned in paragraph 19) no doubt helps to heighten awareness of the opponent's business still further. Finally, the opponent has, since August 2016, been shortlisted for or won a number of awards for its sausages, bacon and restaurant services.

70. As is so often the case, the opponent's evidence is far from perfect. For example, the majority of the photographs provided are either undated or after the material date, turnover for the opponent's retail and concession stand businesses is provided as a global figure (rather than as separate figures) and it is not clear when the opponent's Pigsty restaurant first began trading. However, when taken as a whole, it is clear that the opponent has been conducting a trade in relation to the goods and services in classes 29 and 43. There is, however, as least as far as I can tell, no use shown in relation to any of the goods being relied upon in class 30.

71. As to the use of the trade mark the subject of the registration, Mr Williams states:

“2...I do, however, dispute that the evidence filed by the opponent demonstrates that the [trade mark upon which the opponent relies] is prominently displayed to the extent that it has built up a reputation...”

And:

“3.1 Retail

Where the Registered Mark is affixed to the packaging of the Opponent's products, in every case it is obscured by the brand name 'The Jolly Hog' to the extent that it is not at all prominent...The Opponent actually uses trade mark UK00003092543 on its packaging, not the Registered Mark by itself.”

72. The trade mark to which the applicant refers above looks like this:



73. The applicant repeats this submission in relation to the opponent's concession stands and in relation to its Pigsty restaurant, Mr Williams states:

“I dispute that the registered mark is prominently displayed within the opponent's restaurant. Exhibit three to the opponent's witness statement shows the registered mark appearing on paper food wrapping and cups but where it appears on the wall and windows it is obscured behind the word “PIGSTY”.

74. In my view, Mr William's comments have merit. Although there is undeniably some use shown of the trade mark as registered, in the vast majority of the exhibits provided, the trade mark is shown as part of an integrated whole accompanied by the words "THE JOLLY HOG" or the word PIGSTY. As all three strands of the opponent's business specialise in pork, even if one assumes (given the manner of its integration) that the device of a snout and ears of a pig is even noticed by the average consumer (which, in my view, is arguable), it is, I think, much more likely that like, inter alia, the word "HOG" with which it is also used, it will be taken as an indicator of the meat in relation to which the opponent specialises, rather than as an indicator of trade origin. In short, on the basis of the evidence provided, I am not satisfied that the earlier trade mark upon which the opponent relies is entitled to benefit from an enhanced distinctive character.

Likelihood of confusion

75. In determining whether there is a likelihood of confusion, a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa. As I mentioned above, it is also necessary for me to keep in mind the distinctive character of the opponent's trade mark as the more distinctive it is, the greater the likelihood of confusion. I must also keep in mind the average consumer for the goods and services the nature of the purchasing process and 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 he has retained in his mind.

76. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one trade mark for the other, while indirect confusion is where the average consumer realises the trade marks are not the same but puts the similarity that exists between the trade marks and goods/services down to the responsible undertakings being the same or related.

77. In *Formula One Licensing BV v OHIM*, Case C-196/11P, the CJEU held:

“41.it is not possible to find, with regard to a sign identical to a trade mark protected in a Member State, an absolute ground for refusal, such as the lack of distinctive character, provided by Article 7(1)(b) of Regulation No 40/94 and Article 3(1)(b) of Directives 89/104 and 2008/95. In this respect, it should be noted that the characterisation of a sign as descriptive or generic is equivalent to denying its distinctive character.

42. It is true that, as is clear from paragraph 48 of the judgment under appeal, where an opposition, based on the existence of an earlier national trade mark, is filed against the registration of a Community trade mark, OHIM and, consequently, the General Court, must verify the way in which the relevant public perceives the sign which is identical to the national trade mark in the mark applied for and evaluate, if necessary, the degree of distinctiveness of that sign.

43. However, as the appellant rightly points out, their verification has limits.

44. Their verification may not culminate in a finding of the lack of distinctive character of a sign identical to a registered and protected national trade mark, since such a finding would not be compatible with the coexistence of Community trade marks and national trade marks or with Article 8(1)(b) of Regulation No 40/94, read in conjunction with Article 8(2)(a)(ii).”

78. In *L'Oréal SA v OHIM*, Case C-235/05 P, the CJEU held:

“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 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.”

79. In *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch), Arnold J. considered the impact of the CJEU’s judgment in *Bimbo*, Case C-591/12P, on the court’s earlier judgment in *Medion v Thomson* and stated:

“18. The judgment in *Bimbo* confirms that the principle established in *Medion v Thomson* is not confined to the situation where the composite trade mark for which registration is sought contains an element which is identical to an earlier trade mark, but extends to the situation where the composite mark contains an element which is similar to the earlier mark. More importantly for present purposes, it also confirms three other points.

19. The first is that the assessment of likelihood of confusion must be made by considering and comparing the respective marks — visually, aurally and conceptually — as a whole. In *Medion v Thomson* and subsequent case law, the Court of Justice has recognised that there are situations in which the average consumer, while perceiving a composite mark as a whole, will also perceive that it consists of two (or more) signs one (or more) of which has a distinctive significance which is independent of the significance of the whole, and thus may be confused as a result of the identity or similarity of that sign to the earlier mark.

20. The second point is that this principle can only apply in circumstances where the average consumer would perceive the relevant part of the composite mark to have distinctive significance independently of the whole. It does not apply where the average consumer would perceive the composite mark as a unit having a different meaning to the meanings of the separate components. That includes the

situation where the meaning of one of the components is qualified by another component, as with a surname and a first name (e.g. BECKER and BARBARA BECKER).

21. The third point is that, even where an element of the composite mark which is identical or similar to the earlier trade mark has an independent distinctive role, it does not automatically follow that there is a likelihood of confusion. It remains necessary for the competent authority to carry out a global assessment taking into account all relevant factors.”

80. Earlier in this decision, I concluded that there was no meaningful degree of similarity between the opponent’s services in class 43 and the applicant’s services in classes 35 and 42. Where there is no similarity in the competing services there can be no likelihood of confusion as per the comments of Lady Justice Arden in *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA. In relation to the other goods and services in the application, I found them to be identical or similar to the extent indicated earlier.

81. Having identified the average consumer of those goods and services I found to be identical or similar to be a member of the general public, I held that (i) the goods in classes 29 and 30 would be selected by predominantly visual means (with a relatively low degree of care paid during the selection process) and (ii) the services in classes 39 and 43 would be selected by a mixture of visual and aural considerations (with a varying degree of care being paid during that process).

82. Having assessed the various components of which the competing trade marks are comprised and their relative weight in the overall impression conveyed, I concluded there was a low to medium degree of visual similarity and a fairly high degree of conceptual similarity between the competing trade marks. Finally, I concluded that the opponent’s trade mark was possessed of a low degree of inherent distinctive character which, on the basis of the evidence provided, had not been enhanced by virtue of the opponent’s trading activities.

83. The only similarity between the competing trade marks is in respect of different stylised representations of the snout and ears of a pig. Although that is the only component in the opponent's trade mark and a separate and identifiable component of the applicant's trade mark, I have concluded that in relation to the goods and services I have found to be either identical (or similar to varying degrees), that component is possessed of only a low degree of inherent distinctive character. At this point I remind myself that the fact the opponent's trade mark only possesses a weak distinctive character does not preclude a likelihood of confusion. However, the differences between the competing trade marks and, in particular, the presence in the applicant's trade mark of the words "THE PIG & PALLET", are, in my view, more than sufficient to avoid an average consumer paying even the lowest degree of attention during the selection process mistaking one trade mark for the other.

84. That leaves indirect confusion to be considered. In *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, Mr Iain Purvis Q.C., as the Appointed Person, explained:

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

85. In *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17, Mr James Mellor Q.C., as the Appointed Person, stressed that a finding of indirect confusion should not be

made merely because the two marks share a common element. In this connection, he pointed out that it is not sufficient that a mark merely calls to mind another mark. This is mere association not indirect confusion.

86. The fact that the shared component is of low distinctive character is important. That two unrelated undertakings who either trade or wish to trade in the commercial areas at issue in these proceedings use a device component which sends such a clear conceptual message to the average consumer is, in my view, unsurprising. That the opponent's principal use is with the words "THE JOLLY HOG" and the applicant's trade mark includes, inter alia, the words "THE PIG & PALLET" support that conclusion. In short, I am satisfied that the mere presence of the stylised device of a pig's snout and ears in the applicant's trade mark is also unlikely to lead to indirect confusion.

87. Having reached those conclusions, the opposition based upon section 5(2)(b) of the Act fails and is dismissed accordingly.

Section 5(4)(a)

88. In *Discount Outlet v Feel Good UK*, [2017] EWHC 1400 IPEC, Her Honour Judge Melissa Clarke, sitting as a deputy Judge of the High Court conveniently summarised the essential requirements of the law of passing off as follows:

"55. The elements necessary to reach a finding of passing off are the 'classical trinity' of that tort as described by Lord Oliver in the *Jif Lemon* case (*Reckitt & Colman Product v Borden* [1990] 1 WLR 491 HL, [1990] RPC 341, HL), namely goodwill or reputation; misrepresentation leading to deception or a likelihood of deception; and damage resulting from the misrepresentation. The burden is on the Claimants to satisfy me of all three limbs.

56 In relation to deception, the court must assess whether "*a substantial number*" of the Claimants' customers or potential customers are deceived, but it is not

necessary to show that all or even most of them are deceived (per *Interflora Inc v Marks and Spencer Plc* [2012] EWCA Civ 1501, [2013] FSR 21).”

89. The sign upon which the opponent bases its opposition is identical to that relied upon section 5(2)(b) of the Act and upon which I have commented above. There is no doubt that the opponent has been conducting a trade in relation to goods and services in classes 29 and 43 and that by the date of the application for registration those activities are likely to have generated goodwill. However, for the reasons I have already explained, given the manner of use, that goodwill is, in my view, more likely than not to reside in the words “THE JOLLY HOG” than in the sign relied upon. Without goodwill in the sign being relied upon, the objection based upon section 5(4)(a) falls at the first hurdle and is dismissed accordingly.

Overall conclusion

90. The opposition has failed and, subject to any successful appeal, the application will proceed to registration.

Costs

91. As the applicant has been successful, it is entitled to a contribution towards its costs. Awards of costs in proceedings commenced after 1 July 2016 are governed by Annex A of Tribunal Practice Notice (“TPN”) 2 of 2016. Applying the guidance in that TPN, I award costs to the applicant on the following basis:

Reviewing the Notice of Opposition and preparing a counterstatement:	£200
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Considering the other’ side’s evidence:	£500
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Written submissions:	£200
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Total:

£900

92. I order The Jolly Hog Limited to pay to The Pig & Pallet Limited the sum of **£900**.

This sum is to be paid within fourteen days of the expiry of the appeal period or within fourteen days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 4th day of June 2018

C J BOWEN

For the Registrar