

O/862/22

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00003626207

BY VEEGZ FOODS LTD TO REGISTER THE FOLLOWING TRADE MARK:

VEEGZ

IN CLASSES 30 AND 43

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 426272 BY CROP'S NV

Background and Pleadings

1. On 14 April 2021, Veegz foods Ltd ('the Applicant') filed an application to register the mark shown on the front page of this Decision, number UK00003626207. The application was published for opposition purposes in the *Trade Marks Journal* on 11 June 2021. Registration is sought in respect of the following:

Class 30: *Pastries; Pastry; Puff pastry; Shortcrust pastry; Sandwiches; Wraps [sandwich]; Wrap sandwiches; Sauce [edible]; Biscuits; Shortbread biscuits; Pastries, cakes, tarts and biscuits (cookies); Chocolate; Chocolate bars; Vegan hot chocolate; Dairy-free chocolate; Sweets; Candies [sweets]; Sugarfree sweets; Sweets [candy]; Vegan cakes; Vegan ice cream; Coffee; Coffee substitutes; Ground coffee; Decaffeinated coffee; Coffee pods; Coffee mixtures; Flavoured coffee; Unroasted coffee; Iced coffee; Coffee bags; Instant coffee; Coffee beverages; Coffee drinks; Coffee beans; Chocolate coffee; Coffee flavourings; Coffee flavorings; Coffee based beverages; Freeze-dried coffee; Coffee based drinks; Roasted coffee beans; Ground coffee beans; Coffee-based beverages; Caffeine-free coffee; Beverages made from coffee; Coffee in ground form; Coffee in brewed form; Beverages based on coffee; Fresh pizzas; Pizza; Pizzas; Uncooked pizzas; Pizza sauces; Pizza pies; Pizzas [prepared]; Frozen pizzas; Chilled pizzas; Pizza sauce; Fresh pizza; Frozen pizza; Preserved pizzas; Pizza bases; Sauces for pizzas; Gluten-free pizza; Open sandwiches; Filled sandwiches; Cheeseburgers [sandwiches]; Hamburger sandwiches; Toasted sandwiches; Sandwiches containing salad; Sandwich wraps [bread]; Hot dog sandwiches; Sandwich spread made from chocolate and nuts; Sauces; Cooking sauces; Tomato sauce; Sauce powder; Sauces [condiments]; Concentrated sauce; Pesto [sauce]; Savory sauces; Sauce powders; Spaghetti sauce; Savoury sauces; Sauce mixes; Herb sauces; Pasta sauce; Pasta sauces; Ready-made sauces; Sauces for pasta; Chocolate sweets; Sugarless sweets; Boiled*

sweets; Gum sweets; Mint-based sweets; Sugar-free sweets; Foamed sugar sweets; Mint flavoured sweets (Non-medicated -); Mint based sweets [non-medicated]; Sweets (candy), candy bars and chewing gum; Chewing sweets (Non-medicated -) having liquid fruit fillings; Buns; Bread buns; Filled buns; Bread and buns; Hamburgers in buns; Hamburgers contained in bread buns; Doughnuts; Doughnut mixes; Instant doughnut mixes; Cookies; Cookie mixes; Almond cookies; Cookie dough; Frozen cookie dough; Fried dough cookies.

Class 43: Takeaway services; Takeaway food services; Takeaway food and drink services; Food preparation; Fast food restaurants; Food preparation services; Restaurants; Restaurant services; Self-service restaurants; Mobile restaurant services; Take-out restaurant services; Self-service restaurant services; Fast-food restaurant services; Restaurant and bar services; Grill restaurants; Hotel restaurant services; Restaurants (Self-service -); Carry-out restaurants; Restaurant reservation services; Bar and restaurant services; Restaurant services incorporating licensed bar facilities; Serving food and drink for guests in restaurants; Serving food and drink in restaurants and bars; Providing food and drink for guests in restaurants; Providing food and drink in restaurants and bars; Restaurant services for the provision of fast food; Food sculpting; Contract food services.

2. The application was opposed by Crop's NV ('the Opponent') based on section 5(2)(b) of the Trade Marks Act 1994 ("the Act"). The Opposition is directed against all of the Applicant's goods and services. The Opponent relies on the following earlier registration for its section 5(2)(b) ground, relying on all of the goods in its specification:

UK00918095869

VEGEEZ

Filing date: 17 July 2019

Date of entry in register: 11 June 2020

Registered for following goods:

Class 29	<i>Prepared vegetarian dishes consisting primarily of vegetables not with cheese or dairy as main ingredient; Formed textured vegetable proteins for use as a meat substitute not with cheese, dairy, soya or seitan as main ingredient; all the aforesaid goods produced in a frozen form.</i>
Class 30	<i>Vegetarian dishes consisting primarily of pasta; Vegetarian dishes consisting primarily of rice; all the aforesaid goods produced in a frozen form.</i>

3. The Opponent claims that:

- 'there is a great degree of visual and aural similarity' between the marks;
- 'Conceptually [sic] both trademarks have no meaning';
- the respective parties' goods and services are similar;
- and
- that there is a likelihood of confusion between the parties' marks.

4. The Applicant filed a Defence and Counterstatement in which it:

- denies that there is any aural similarity between the parties' marks;
- argues that the 'visuals are very different';
- and
- claims that there is no likelihood of confusion.

5. The Opponent is represented by KOB NV – Mrs Trui Castelein; the Applicant represents itself.

6. Neither party has filed evidence. Written submissions were filed during the evidence round by the Opponent only. A hearing was neither requested nor thought necessary. Neither party has filed written submissions in lieu of a hearing.
7. The following decision has been made after careful consideration of the papers before me.

Decision

Section 5(2)(b) of the Act and related case law

8. Section 5(2)(b) of the Act states:

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

(a) ...

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

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

9. In accordance with section 6 of the Act, the Opponent’s mark is an earlier mark by virtue of its earlier filing date (17 July 2019) which falls before the filing date of the applied-for mark on 14 April 2021.
10. Section 6A of the Act provides that where the date on which the registration procedure of the earlier mark was completed more than 5 years prior to the application date (or priority date) of the applied-for mark, the Opponent may be required to prove use of the earlier mark. In the instant case, section 6A is not engaged because the Opponent’s mark had been registered for less than 5 years on the date on which the Applicant filed its application. The Opponent is therefore entitled to rely upon all of the goods that it seeks to rely upon.

11. The following principles are derived from the decisions of the Court of Justice of the European Union¹ (“CJEU”) in:

Sabel BV v Puma AG, Case C-251/95; *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97; *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97; *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98; *Matratzen Concord GmbH v OHIM*, Case C-3/03; *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C120/04; *Shake 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;

¹ Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Trade Marks Act relied on in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case-law of EU courts.

- (e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;
- (f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;
- (g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;
- (h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;
- (i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;
- (j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;
- (k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of goods and services

12. Section 60A of the Act provides:

“(1) For the purpose of this Act goods and services-

(a) are not to be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification.

(b) are not to be regarded as being dissimilar from each other on the

ground that they appear in different classes under the Nice Classification.

(2) In subsection (1), the ‘Nice Classification’ means the system of classification under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, which was last amended on 28 September 1975.”

13. In making an assessment between the competing goods and services, I bear in mind the decision of the General Court (‘GC’) in *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05

“29. ... the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut für Lernsysteme v OHIM-Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark”.

14. The CJEU in *Canon*, Case C-39/97, stipulates that all relevant factors relating to a parties’ goods and services must be taken into account:

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

15. Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281², identified the following factors for assessing similarity of the respective goods and services:

² *British Sugar Plc v James Robertson & Sons Ltd* [1996] R. P. C. 281, pp 296-297.

- (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.

16. Goods or services will be found to be in a competitive relationship only where one is substitutable for the other.³

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

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

18. Goods (or services) may be grouped together for the purposes of assessment:

Separode Trade Mark BL O-399-10 (AP):

³ *Lidl Stiftung & Co KG v EUIPO*, Case T-549/14.

“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.”

19. The goods and services to be compared are set out above at [1] and [2].

20. The Opponent has argued⁴ that ‘all the goods and services are identical or at least highly similar’; but has not specified which goods or services within the Applicant’s specification are identical/highly similar to which particular goods in the Opponent’s specification. The Opponent’s submissions regarding comparison of the parties’ respective specifications are therefore of little assistance.

21. Class 30

Contested goods: *Sandwiches; Wraps [sandwich]; Wrap sandwiches; Fresh pizzas; Pizza; Pizzas; Uncooked pizzas; Pizza pies; Pizzas [prepared]; Frozen pizzas; Chilled pizzas; Fresh pizza; Frozen pizza; Preserved pizzas; Gluten-free pizza; Open sandwiches; Filled sandwiches; Toasted sandwiches; Sandwiches containing salad; Filled buns*

I compare these goods against the Opponent’s class 29 term *Prepared vegetarian dishes consisting primarily of vegetables not with cheese or dairy as main ingredient*. The Applicant’s goods are all ‘dishes’, i.e. foods prepared in a particular way as part of a meal. Although the *fillings or toppings* for these goods may consist primarily of vegetables, while being devoid of cheese or dairy, these goods consist primarily of bread of some sort. The parties’ goods will overlap in purpose to the extent that both may be consumed as a meal. Users will, in my view, coincide; consumers of the Applicant’s goods may also be consumers of the Opponent’s

⁴ Opponent’s written submissions, page 6 of the electronic file (the document is unpaginated).

goods. The physical nature of the respective goods will differ to the extent that the primary ingredient of the Applicant's goods will be bread, as compared to the Opponent's goods which are vegetable-based. Trade channels will be shared; both parties' goods may be sold by the same retail outlets or suppliers. Where the goods are self-selected by purchasers, I consider it unlikely that both parties' goods would be located on the same shelves. I find there to be competition between the goods in certain instances; for example, where a time-pressed consumer intending to have a quick supper deliberates over whether to purchase a sandwich or pizza over a prepared vegetarian dish. I do not consider the goods to be complementary; although it is possible for the average consumer to presume both parties' goods to originate from the same undertaking, neither good is necessary for the other. I find the parties' goods to be similar to a medium degree.

22. Contested goods: *Chocolate; Chocolate bars; Dairy-free chocolate.*

I compare these goods against the Opponent's *Prepared vegetarian dishes consisting primarily of vegetables not with cheese or dairy as main ingredient*. The Applicant's terms are confectionery items, being types of chocolate goods. The parties' goods share a purpose only to the very broad extent that both are edible. Their specific purposes differ; the Applicant's goods typically consumed as snacks or treats,⁵ whereas the Opponent's goods are typically consumed as meals. Users may overlap somewhat; purchasers of the Applicant's goods may also purchase the Opponent's prepared dishes. The physical nature of the respective goods will differ greatly: the Applicant's goods will be sold in the form of blocks, flakes or powder; and they neither comprise vegetables, nor would be described as 'prepared dishes'. Trade channels will overlap somewhat; some suppliers/retailers/providers of food services will offer both parties' goods. Where the goods are self-selected, they will not, in my view, be located on the same shelves. I do not consider the parties' goods to be in a competitive relationship; although both parties' goods are edible, neither good is a realistic alternative for the other. I do not find complementarity either; neither good is necessary for the other, and the average consumer would unlikely attribute both parties' goods to the

⁵ It is recognised that chocolate is also used as a cooking ingredient.

same undertaking. In my view, user and trade channel overlap alone, are, without more, insufficient to support a finding of similarity between the goods. I find the respective goods to be dissimilar. If I am wrong about that, then the level of similarity will be no more than very low. There are no other goods within the Opponent's specification which will yield a closer level of similarity.

23. I do not find the Applicant's [...] *chewing gum* to have any level of similarity with any of the Opponent's goods. Although users and trade channels may overlap, the purpose and method of use of 'chewing gum' do not align with the purposes or methods of use of any of the Opponent's goods.

24. Contested goods: *Sweets; Candies [sweets]; Sugarfree sweets; Sweets [candy]; Chocolate sweets; Sugarless sweets; Boiled sweets; Gum sweets; Mint-based sweets; Sugar-free sweets; Foamed sugar sweets; Mint flavoured sweets (Non-medicated -); Mint based sweets [non-medicated]; Sweets (candy), candy bars[...]; Chewing sweets (Non-medicated -) having liquid fruit fillings*

I compare these goods, all being sweets of some sort, against the Opponent's *Prepared vegetarian dishes consisting primarily of vegetables not with cheese or dairy as main ingredient*. The specific purposes of the respective goods will differ in the manner described above at [22]. The physical nature of the goods will also differ; sweets are usually bite-sized pieces of confectionery, in contrast to the Opponent's 'prepared dishes'. Users and trade channels will also overlap in the manner already described at [22]. I do not consider the parties' goods to be in a competitive relationship; although both parties' goods are edible, neither good is a realistic alternative for the other. I do not find complementarity either; neither good is necessary for the other, and the average consumer would unlikely attribute both parties' goods to the same undertaking. In my view, user and trade channel overlap alone, are, without more, insufficient to support a finding of similarity between the goods. I find the respective goods to be dissimilar. If I am wrong about that, then the level of similarity will be no more than very low. There are no other goods within the Opponent's specification which will yield a closer level of similarity.

25. Contested goods: *Vegan hot chocolate; Coffee; Coffee substitutes; Ground coffee; Decaffeinated coffee; Coffee pods; Coffee mixtures; Flavoured coffee; Unroasted coffee; Iced coffee; Coffee bags; Instant coffee; Coffee beverages; Coffee drinks; Coffee beans; Chocolate coffee; Coffee flavourings; Coffee flavorings; Coffee based beverages; Freeze-dried coffee; Coffee based drinks; Roasted coffee beans; Ground coffee beans; Coffee-based beverages; Caffeine-free coffee; Beverages made from coffee; Coffee in ground form; Coffee in brewed form; Beverages based on coffee*

I disagree with the Opponent's submission that these goods are 'types of sweets, confectionery, cookies'; these particular goods are beverages or flavourings to be added to beverages. The Opponent's specification comprises food items only. The specific purposes and methods of use of the respective goods will differ; the Applicant's goods being beverages. Users and trade channels will overlap somewhat; coffee shops and other such outlets may sell both beverages and the Opponent's goods, although the respective goods would unlikely be located in close proximity with one another i.e. on the same shelves. I do not consider the Applicant's beverages to be in competition with, or complementary to, any of the Opponent's goods. In my view, there are no goods within the Opponent's specification which can be said to be similar to these goods. I find the parties' respective goods to be dissimilar.

26. Contested goods: *Pastry; Puff pastry; Shortcrust pastry; Doughnut mixes; Instant doughnut mixes; Cookie mixes; Cookie dough; Frozen cookie dough; pizza bases*

The Applicant's goods are items of food that require further acts of preparation in order for them to be consumed. For example: the various types of pastry need to be rolled out and shaped in order to make a pie/tart/roll/parcel, as the case may be; the cookie mixes/doughs will need to be 'made up'/rolled out and shaped. The Opponent's goods are, broadly speaking, prepared vegetarian dishes or vegetable proteins for use as meat substitutes. The purposes of the respective goods coincide only to the very broad extent that both are foodstuffs. The specific purposes and methods of use of the Applicant's above-named goods do not, in my view, coincide with those of the Opponent's goods. Users will overlap somewhat;

some purchasers will consume both parties' goods. Trade channels will overlap; supermarkets and other outlets will sell both parties' goods. Where goods are self-selected, both parties' goods would unlikely be found in the same section, but it would not be impossible. I do not consider the Applicant's goods to be in a competitive relationship with any of the Opponent's goods. I do not find complementarity either; the Applicant's goods are not, in my view, necessary for the Opponent's goods, and the average consumer would not presume both to originate from the same undertaking. In my view, there are no goods within the Opponent's specification which can be said to be similar to these goods. I find the parties' respective goods to be dissimilar.

27. Contested goods: *Biscuits; Shortbread biscuits; cakes, tarts and biscuits (cookies); Vegan cakes; Doughnuts; Cookies; Almond cookies; Fried dough cookies*

I compare these goods against the Opponent's *Prepared vegetarian dishes consisting primarily of vegetables not with cheese or dairy as main ingredient*. The Applicant's goods are items of confectionery, typically enjoyed as a sweet treat, snack or dessert. They will therefore have a different specific purpose, and method of use, to those of the Opponent's goods. Users will overlap somewhat; purchasers of the Applicant's goods may also purchase the Opponent's prepared dishes. The physical nature of the parties' goods will differ; the Applicant's goods being 'bakery' goods whose primary ingredient is pastry or a batter of some sort, in contrast to the Opponent's 'prepared dishes' based on vegetables. Trade channels will overlap; both parties' goods may be sold by the same supermarkets/retail outlets/providers of food services. Where the goods are self-selected, the parties' goods will unlikely be located on the same shelves. I do not find the parties' goods to be competitive or complementary. Neither party's goods are substitutable for the other. Neither party's goods are necessary for each other, and the average consumer would not, to my mind, presume both parties' goods to originate from the same undertaking. In the light of the foregoing, I find the parties' goods to be dissimilar.

28. Contested goods: *Sauce [edible]; Pizza sauces; Pizza sauce; Sauces for pizzas; Tomato sauce; Sauces [condiments]; Concentrated sauce; Pesto [sauce]; Savory*

sauces; Spaghetti sauce; Savoury sauces; Sauce mixes; Herb sauces; Pasta sauce; Pasta sauces; Ready-made sauces; Sauces for pasta; Sauces; Cooking sauces

I first compare these goods against the Opponent's class 30 term *Vegetarian dishes consisting primarily of pasta*. The Applicant's goods are items of foods which impart flavour to, or constitute an ingredient in, dishes. The Opponent's goods are prepared foods typically consumed as part of a main meal. Although both sets of goods are foodstuffs, the specific purposes of the parties' respective goods will therefore be different. Users and trade channels will overlap. The goods differ in physical nature; the Applicant's goods being liquids or pastes poured or spread onto foods. The goods are not in competition. I do, however, find complementarity in some instances: the Applicant's sauces may be used as ingredients in the Opponent's goods, and the average consumer may presume both parties' goods to originate from the same undertaking. I find the parties' respective goods to have a low level of similarity.

29. I now compare the contested goods, enumerated above at [28], against the Opponent's class 29 term *Prepared vegetarian dishes consisting primarily of vegetables not with cheese or dairy as main ingredient*. For the same reasons provided above at [28], I find the parties' goods to have a low level of similarity.

30. Contested goods: *Sauce powders*

I compare these goods against the Opponent's class 29 term *Prepared vegetarian dishes consisting primarily of vegetables not with cheese or dairy as main ingredient*. The specific purposes of the respective goods will differ in the manner set out above at [28]. Methods of use will also differ; the Applicant's goods will need to be prepared (i.e. 'made up' by adding water and/or other ingredients and, often, applying heat). The physical nature of the respective goods will differ by virtue of the Applicant's goods being in powder form. Trade channels will overlap; both parties' goods will be sold in supermarkets/food shops. Where the goods are self-selected, both parties' goods will be found on different shelves. There is no competition between the goods. I do not find complementarity, either; sauce

powders may be important as an ingredient for the Opponent's goods, and it is possible that the average consumer might presume both parties' goods to originate from the same undertaking. I find the parties' respective goods to have a low level of similarity.

31. Contested goods: *Cheeseburgers [sandwiches]; Hamburger sandwiches; Hot dog sandwiches; Hamburgers in buns; Hamburgers contained in bread buns*

I compare these goods to the Opponent's class 30 term *Formed textured vegetable proteins for use as a meat substitute not with cheese, dairy, soya or seitan as main ingredient*. The Applicant's goods are prepared foods comprising bread with a burger (or burger and cheese) or sausage filling, both of which may be in meat or non-meat form. The Opponent's goods cover meat substitutes, albeit *solus* rather than in a sandwich or bread bun. The parties' respective goods share a purpose only to the broad extent that both are foodstuffs. The goods' specific purposes, and methods of use, are different: the Applicant's goods are 'ready-to-eat' complete meals or snacks, which can be eaten 'on the go'; whereas the Opponent's goods are used as an ingredient in meals or snacks. Users and trade channels will overlap. In my view, the respective goods are not in a competitive relationship. Although the Opponent's goods are, by definition, meat substitutes, I do not consider a 'ready to eat' food item such as a cheeseburger/hotdog in a bread bun to be substitutable for a packet of '*formed textured vegetable protein for use as a meat substitute*' which will require further preparation before consumption. I do not find the respective goods to be complementary, either; neither set of goods is important or necessary for the other. I therefore find the respective goods to be dissimilar. If I am wrong about that, then the level of similarity will be no more than very low. There are no other goods within the Opponent's specification which will yield a closer level of similarity.

32. Contested goods: *Sandwich wraps [bread]; Buns; Bread buns; Bread and buns.*

I compare these goods to the Opponent's class 30 term *Formed textured vegetable proteins for use as a meat substitute not with cheese, dairy, soya or seitan as main ingredient*. The Applicant's goods are types of bread, typically eaten with fillings

added to them. The Opponent's goods are typically used as ingredients in dishes, including as fillings for breads. The specific purposes will therefore differ, although the goods share the broad purpose of being foodstuffs. Users and trade channels will overlap. The goods will differ in physical nature, the Applicant's goods being types of breads as compared to the Opponent's textured vegetable proteins. I do not find the respective goods to be in a competitive relationship because neither is substitutable for the other. I do not consider the goods to be complementary; although the Opponent's goods may be important or useful as fillings for the Applicant's bread products, I consider it unlikely that the average consumer would attribute both sets of goods to the same undertaking. I find the parties' respective goods to be dissimilar. If I am wrong about that, then the level of similarity will be no more than very low.

33. Contested goods: *Pastries; Pastries [...]*

I compare these goods against the Opponent's *Prepared vegetarian dishes consisting primarily of vegetables not with cheese or dairy as main ingredient*. The Applicant's goods comprise sweet or savoury baked goods, whose principal ingredient is pastry, to which various flavourings/fillings/toppings are added, and will include, *inter alia*: croissants, sausage rolls, pains aux chocolats. The respective goods will, in some cases, overlap in purpose and method of use; pastries can contain savoury vegetable-based fillings and might be consumed as part of a meal. Users will overlap; consumers of pastries may also consume the Opponent's prepared dishes. The physical nature of the respective goods will differ; the Applicant's goods being pastry items as compared to the Opponent's prepared vegetable-based dishes. Trade channels will overlap; supermarkets and other food shops may sell both parties' goods. Where the goods are self-selected, both parties' goods will not, in my view, typically be found in close proximity to one another. I find there to be competition between the goods in certain instances; for example, where a time-pressed consumer intending to have a quick supper deliberates over whether to purchase a savoury pastry over a prepared vegetarian dish. I do not consider the goods to be complementary. Neither good is necessary for the other and the average consumer would not, to my mind, presume both sets

of goods to originate from the same undertaking. I find the parties' respective goods to be similar to a medium degree.

34. Contested goods: *vegan ice cream*

Having considered the respective users, uses, physical natures, trade channels and whether or not the goods are in competition or complementary, I find the parties' respective goods to be dissimilar.

35. Contested goods: *Sandwich spread made from chocolate and nuts*

Having considered the respective users, uses, physical natures, trade channels and whether or not the goods are in competition or complementary, I find the parties' respective good to be dissimilar. I do not find these goods to have any level of similarity with any of the Opponent's goods.

36. Class 43

Contested services: *Takeaway services; Takeaway food services; Takeaway food and drink services; Fast food restaurants; Restaurants; Restaurant services; Self-service restaurants; Mobile restaurant services; Take-out restaurant services; Self-service restaurant services; Fast-food restaurant services; Restaurant and bar services; Grill restaurants; Hotel restaurant services; Restaurants (Self-service -); Carry-out restaurants; Bar and restaurant services; Restaurant services incorporating licensed bar facilities; Serving food and drink for guests in restaurants; Serving food and drink in restaurants and bars; Providing food and drink for guests in restaurants; Providing food and drink in restaurants and bars; Restaurant services for the provision of fast food.*

I compare these services against the Opponent's class 29 goods⁶ *Prepared vegetarian dishes consisting primarily of vegetables not with cheese or dairy as main ingredient*. The Applicant's services entail the provision of prepared meals ready for

⁶ The Applicant's services could also be compared against the Opponent's Class 30 goods *vegetarian dishes consisting primarily of pasta*.

consumption on the restaurant/bar premises or to be taken away and consumed elsewhere. The specific purposes of the respective services and goods are different; the purpose of the Applicant's services is the *provision and/or serving of* prepared meals, whereas the purpose of the Opponent's goods is the sating of appetite and/or nourishment of the body. Users and trade channels will overlap; the Opponent's goods will often be consumed in restaurants or as takeaways. The respective goods and services will, in some circumstances, be in competition: e.g. one might deliberate over whether to order/collect a takeaway meal or whether to purchase one to be consumed at home. I also find the respective goods and services to have a degree of complementary: the Opponent's prepared dishes will be necessary for the Applicant to deliver its services where those services entail the provision of prepared *vegetable-based*⁷ meals for immediate consumption; and the average consumer would presume both goods/services to originate from the same undertaking. I find the Applicant's services to be similar to the Opponent's goods to a medium degree.

37. Contested services: *Food preparation; Food preparation services*

I compare these services against the Opponent's *Prepared vegetarian dishes consisting primarily of vegetables not with cheese or dairy as main ingredient*. The Applicant's services entail the preparation of food, whereas the Opponent's goods are the end goods that have been created as a result of the food preparation services. The respective services and goods will therefore differ in purpose and methods of use. Users will be distinct: those engaging the Applicant's services will typically be professional customers seeking the services of a chef, for example, whereas the average consumer of the Opponent's goods will be predominantly the general public. The physical nature of the respective goods and services will differ; the Applicant's offering entails an act of service, in contrast to the Opponent's tangible goods in the form of prepared vegetable-based dishes. Trade channels will be distinct; the Applicant's services will typically be marketed to the catering trade, whereas the Opponent's goods will be sold to the general public via retail outlets and eateries. I do not consider the goods and services to be in a competitive relationship. I do not find complementarity, either; although food preparation

⁷ The Applicant may also deliver prepared meta-based meals, therefore the complementarity is not total.

services are necessary in order to create the Opponent's prepared dishes, the average consumer would not, in my view, presume the respective goods and services to originate from the same undertaking. I find the parties' goods and services to be dissimilar.

38. Contested services: *Restaurant reservation services.*

I compare these services against the Opponent's *Prepared vegetarian dishes consisting primarily of vegetables not with cheese or dairy as main ingredient.* *Restaurant reservation services* concern the arranging of table bookings at restaurants. These services are sometimes offered by third parties as well as by the restaurants themselves. The specific purposes and methods of use of the respective goods and services will therefore differ. The services will be accessed by telephone, online or by visiting the restaurant itself. Trade channels may overlap in some instances e.g. some reservations may be made in person by visiting the particular restaurant serving the prepared dishes. Users will overlap; consumers booking table reservations will also necessarily consume meals served at the restaurant. The natures of the respective services and goods are very different; the Applicant provides acts of service as compared to the Opponent's prepared meals, which are tangible goods. There is no competition between the respective services and goods. I do not find complementarity; although the average consumer might presume both goods and services to originate from the same undertaking, the services are not necessary for the Opponent's goods. I find the parties' goods and services to be dissimilar.

39. Contested services: *Food sculpting*

I compare these services against the Opponent's goods *Prepared vegetarian dishes consisting primarily of vegetables not with cheese or dairy as main ingredient.* In my view, the specific purposes of the respective services and goods will be very different; the purpose of food sculpting being the creation of sculptures out of foodstuffs to create aesthetically pleasing displays for tables, typically for celebrations and other special occasions. User overlap is, in my view, unlikely; an average consumer of the Opponent's prepared dishes would unlikely also employ

a food sculptor. Food sculpting services would, to my mind, more likely be engaged by professionals in the catering business. Trade channel overlap is unlikely, but not impossible. The natures of the respective services and goods are different; the Applicant's offering being an act of service i.e. the creation of a food sculpture, as compared to the Opponent's tangible goods. I do not consider the respective services and goods to be in a competitive relationship. I do not find complementarity, either; the Applicant's services are not necessary in order to produce the Opponent's goods and the average consumer would unlikely presume that the same undertaking is responsible for the respective services and goods. I therefore find the Applicant's services to be dissimilar to the Opponent's goods.

40. Contested services: *Contract food services*

I compare these services against the Opponent's *Prepared vegetarian dishes consisting primarily of vegetables not with cheese or dairy as main ingredient*. The Applicant's services will typically cover catering services provided to a business or organisation for a certain length of time. The specific purposes of the respective services and goods will differ; the Applicant's offering being an act of service i.e. the provision of catering, as compared to the Opponent's tangible goods. Consumers of the Applicant's services will be businesses and other organisations, whereas consumers of the Opponent's goods will, in most cases, be the general public. Some user overlap is possible, however; a business/organisation may also purchase the Opponent's goods. Trade channels may overlap; the same undertaking may provide both contract food services as well as the Opponent's prepared dishes. The services and goods will differ in nature; the Applicant's offering comprising acts of service as opposed to the Opponent's tangible goods. I do not consider the parties' services and goods to be in competition; a contract for a catering service is not, in my view, a realistic substitution for the purchase of the Opponent's prepared dishes. I do, however, find complementarity: a catering service may 'buy in' the Opponent's goods and provide them in the course of their contract food service, and the average consumer may presume the same undertaking to be responsible for both parties' offerings. In the light of the foregoing, I find the Applicant's services to be similar to the Opponent's goods to a low degree.

Average consumer and the purchasing act

41. The average consumer is deemed to be reasonably well-informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97.

42. In *Hearst Holdings Inc*⁸ Birss J. (as he then was) described the average consumer thus:

“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 word “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

43. Class 30

The average consumer of the class 30 goods will be a member of the general public. The purchasing act will be primarily visual. In supermarkets and shops, the goods will be self-selected from physical shelves. Where the goods are provided by restaurants and other providers of food, they will be selected from menus or, in the case of some of the goods, after having seen them on display. It is recognised that there will be an aural aspect to the purchasing process where consumers make requests to staff. I consider the goods to be casual ‘everyday’ purchases for which a high degree of consideration is not necessary. The average consumer will therefore pay a medium degree of attention when making a purchase.

⁸ *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).

44. Class 43

The average consumer of the class 43 services, with the exception of (*Contract food services*) will be, predominantly, the general public. I recognise that there will be a smaller number of corporate diners. The services provided will be accessed by entering the premises, during which the average consumer is likely to be exposed to the Applicant's mark by way of signage etc., or by ordering from a website. It is appreciated that there will also be instances where the consumer might enter the venue having first heard about it by 'word of mouth' and subsequently visited the high street to look for it. In such instances, the consumer's first encounter with the service provider's mark will be aural. The average consumer will consider factors such as cost and suitability for their diet when making their purchases. I consider these services to be casual 'everyday' purchases for which a high degree of consideration is not necessary. The average consumer will therefore pay an average degree of attention when making a purchase.

45. I now consider the average consumer of the Applicant's *Contract food services*. These services will almost always be engaged by the professional public, i.e. businesses and other organisations. The purchasing act will be primarily visual to the extent that the service provider will, in many cases, be first encountered visually e.g. on a web site or in a trade/service directory. Some purchasers might first encounter the service provider by word-of-mouth, in which case there will be an aural aspect to the purchasing process. In my view, the decision to engage these services will be a carefully considered one and the average consumer will pay a higher-than-average level of attention during the purchasing process. I consider that most transactions would conclude only after discussion with the service provider on, *inter alia*, the needs of the business/organisation engaging the services.

Comparison of the marks

Opponent's (earlier) mark: VEGEEZ	Applicant's (contested) mark: VEEGZ
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46. It is clear from *Sabel BV v Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The 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.”

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

48. The Opponent’s mark is a word mark⁹ consisting of the single word ‘VEGEEZ’, all characters rendered in a plain sans-serif typeface and in upper case. The overall impression of the mark resides in the mark in its entirety.

⁹ In *LA Superquimica v EUIPO*, Case T-24/17, at paragraph [39] it was held that:

‘ [...] it should be noted that a word mark is a mark consisting entirely of letters, words or groups of words, without any specific figurative element. The protection which results from registration of a word mark thus relates to the word mentioned in the application for registration and not the specific figurative or stylistic aspects which that mark might have. As a result, the font in which the word sign might be presented must not be taken into account. It follows that a word mark may be used in any form, in any colour or font type (see judgment of 28 June 2017, *Josel v EUIPO — Nationale-Nederlanden Nederland (NN)*, T-333/15, not published, EU:T:2017:444, paragraphs 37 and 38 and the case-law cited).’

49. The Applicant's mark is also a word mark¹⁰ and consists of the single word 'VEEGZ', all characters rendered in a plain sans-serif typeface and in upper case. The overall impression of the mark resides in the mark in its entirety.

50. Visual comparison

The Opponent has submitted¹¹ that there is 'a high visual similarity between both trademarks'. The Applicant has argued¹² that 'even though both trademarks use the same letters, the pronunciation and visuals are very different'.

51. Both marks are fairly short word marks; and share the first two characters 'VE' and the final character 'Z'. The 'EE' element is also shared, albeit towards the beginning of the Applicant's mark as compared to the Opponent's mark in which 'EE' appears towards the end. Both marks are composed of the characters V, E, G and Z only. Points of visual difference between the marks are:

- the fact that the Opponent's mark has 6 characters whereas the Applicant's mark has 5 characters;
- the Opponent's mark ends in 'GEEZ' whereas the Applicant's mark ends in 'EGZ'.

I find the marks to have a medium – high level of visual similarity.

¹⁰ In *LA Superquimica v EUIPO*, Case T-24/17, at paragraph [39] it was held that:

'[...] it should be noted that a word mark is a mark consisting entirely of letters, words or groups of words, without any specific figurative element. The protection which results from registration of a word mark thus relates to the word mentioned in the application for registration and not the specific figurative or stylistic aspects which that mark might have. As a result, the font in which the word sign might be presented must not be taken into account. It follows that a word mark may be used in any form, in any colour or font type (see judgment of 28 June 2017, *Josel v EUIPO — Nationale-Nederlanden Nederland (NN)*, T-333/15, not published, EU:T:2017:444, paragraphs 37 and 38 and the case-law cited).'

¹¹ Opponent's written submissions in lieu of a hearing, second page (document is unpaginated and paragraphs are unnumbered).

¹² Applicant's counterstatement, first paragraph.

52. Aural comparison

The Opponent has submitted¹³ that the pronunciation of the respective marks 'is practically identical'. The Applicant has argued¹⁴ that there is no aural similarity between the marks.

53. I disagree with the Opponent's submission. The Opponent's mark, in my view, will be articulated as 'VE-JEEZ', with the emphasis on the first syllable and a soft 'G'. I consider that the Applicant's mark, on the other hand, will be articulated as 'VEEGZ' with a hard 'G'. The aural similarities, to my mind, are:

- the presence of the 'EE' sound in both marks;
and
- the 'V' and 'Z' sounds at the beginning and end of the respective marks.

I find the marks to have a medium level of aural similarity.

54. Conceptual comparison

Neither party has addressed the matter of the conceptual similarity, or otherwise, between the respective marks. In my view, the Opponent's mark 'VEGEEZ' will be perceived by the average consumer as an invented word, albeit a word that calls to mind a colloquial term for vegetables i.e. 'veggies'. I consider that the Applicant's mark 'VEEGZ' will also be perceived as an invented word, to which no concept will readily attach. I therefore find the marks to be conceptually dissimilar.

Distinctive character of the earlier mark

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

"22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the

¹³ Opponent's written submissions in lieu of a hearing

¹⁴ Applicant's counterstatement, first paragraph.

mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

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

56. Registered trade marks possess varying degrees of inherent distinctive character from the very low, because they are suggestive of, or allude to, a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities.

57. ‘VEGEEZ’ does not appear in the English dictionary. In my view, the mark will be perceived by the average consumer as a made-up word, albeit suggestive of the colloquial word ‘veggies’ referring to vegetables or, perhaps, vegetarians. I find the Opponent’s mark to have a medium level of inherent distinctive character.

58. No evidence has been submitted. I am therefore unable to make a finding in respect of enhanced distinctive character.

Likelihood of confusion

59. Confusion can be direct or indirect. Mr Iain Purvis Q. C., as the Appointed Person, explained the difference in the decision of *L.A. Sugar Limited v Back Beat Inc*¹⁵. Direct confusion occurs when one mark is mistaken for another. In *Lloyd Schuhfabrik*¹⁶, the CJEU recognised that the average consumer rarely encounters the two marks side by side but must rely on the imperfect picture of them that they have kept in mind. Direct confusion can therefore occur by imperfect recollection when the average consumer sees the later mark but mistakenly matches it to the imperfect image of the earlier mark in their 'mind's eye'. Indirect confusion occurs when the average consumer recognises that the competing marks are not the same in some respect, but the similarities between them, combined with the goods/services at issue, leads them to conclude that the goods/services are the responsibility of the same or economically linked undertaking.

60. I must keep in mind that a global assessment is required taking into account all of the relevant factors, including the principles a) – k) set out above at [11]. When considering all relevant factors 'in the round', I must bear in mind that a greater degree of similarity between goods/services *may* be offset by a lesser degree of similarity between the marks, and vice versa.

61. I have found the following of the Applicant's goods and services to have some level of similarity with the Opponent's goods and services:

- Similar to a medium degree:

Class 30 - Sandwiches; Wraps [sandwich]; Wrap sandwiches; Fresh pizzas; Pizza; Pizzas; Uncooked pizzas; Pizza pies; Pizzas [prepared]; Frozen pizzas; Chilled pizzas; Fresh pizza; Frozen pizza; Preserved pizzas; Gluten-free pizza; Open sandwiches; Filled sandwiches; Toasted sandwiches; Sandwiches containing salad; Filled buns; Pastries; Pastries [...]

¹⁵ Case BL O/375/10 at [16].

¹⁶ *Lloyd Schuhfabrik Meyer and Co GmbH v Klijsen Handel BV* (C-34297) at [26].

Class 43 - Takeaway services; Takeaway food services; Takeaway food and drink services; Fast food restaurants; Restaurants; Restaurant services; Self-service restaurants; Mobile restaurant services; Take-out restaurant services; Self-service restaurant services; Fast-food restaurant services; Restaurant and bar services; Grill restaurants; Hotel restaurant services; Restaurants (Self-service -); Carry-out restaurants; Bar and restaurant services; Restaurant services incorporating licensed bar facilities; Serving food and drink for guests in restaurants; Serving food and drink in restaurants and bars; Providing food and drink for guests in restaurants; Providing food and drink in restaurants and bars; Restaurant services for the provision of fast food.

- Similar to a low degree:

Class 30 - Sauce [edible]; Pizza sauces; Pizza sauce; Sauces for pizzas; Tomato sauce; Sauces [condiments]; Concentrated sauce; Pesto [sauce]; Savory sauces; Spaghetti sauce; Savoury sauces; Sauce mixes; Herb sauces; Pasta sauce; Pasta sauces; Ready-made sauces; Sauces for pasta; Sauces; Cooking sauces; Sauce powders

Class 43 - Contract food services

62. In my view, a significant proportion of average consumers would confuse the marks. The respective marks are: visually similar to a medium-high degree; and aurally similar to a medium degree. The purchasing act will, in the case of all of the goods and services, be *primarily* visual. I note the observation by the General Court in the case of *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02 that the beginnings of words tend to have more of a visual and aural impact than the ends of words, although I recognise that this is not an absolute rule. In the instant case, the respective marks share both similar beginnings and endings i.e. 'VE' and 'GZ'. The marks share the element 'EE' and are composed of the same characters: 'V', 'E', 'G' and 'Z'. In my view, the differences between the marks in terms of the spelling/order of the characters in the middle of the respective words (i.e. 'EEG' as compared to 'EGEE') will be easily overlooked when viewing each mark as a whole because these 'strings' of characters will both be flanked by the beginnings and endings 'VE' and 'GZ', respectively. It is my view that when the average consumer

encounters the Opponent's mark, they may mistake it for the Applicant's mark (or vice versa) because the mind's eye has failed to register the visual differences in the middle part of the word marks; and consumers do not compare marks side by side. There is a likelihood of confusion. I find this to be the case, despite the conceptual dissimilarity between the marks, and even where the average consumer displays a higher-than-average level of attention during the purchasing act.

63. There will be no likelihood of confusion in respect of those of the Applicant's goods and services that I have found to be dissimilar to the Opponent's goods:

Class 30 - Chocolate; Chocolate bars; Dairy-free chocolate; [...] chewing gum; Sweets; Candies [sweets]; Sugarfree sweets; Sweets [candy]; Chocolate sweets; Sugarless sweets; Boiled sweets; Gum sweets; Mint-based sweets; Sugar-free sweets; Foamed sugar sweets; Mint flavoured sweets (Non-medicated -); Mint based sweets [non-medicated]; Sweets (candy), candy bars[...]; Chewing sweets (Non-medicated -) having liquid fruit fillings; Vegan hot chocolate; Coffee; Coffee substitutes; Ground coffee; Decaffeinated coffee; Coffee pods; Coffee mixtures; Flavoured coffee; Unroasted coffee; Iced coffee; Coffee bags; Instant coffee; Coffee beverages; Coffee drinks; Coffee beans; Chocolate coffee; Coffee flavourings; Coffee flavorings; Coffee based beverages; Freeze-dried coffee; Coffee based drinks; Roasted coffee beans; Ground coffee beans; Coffee-based beverages; Caffeine-free coffee; Beverages made from coffee; Coffee in ground form; Coffee in brewed form; Beverages based on coffee; Pastry; Puff pastry; Shortcrust pastry; Doughnut mixes; Instant doughnut mixes; Cookie mixes; Cookie dough; Frozen cookie dough; pizza bases; Biscuits; Shortbread biscuits; cakes, tarts and biscuits (cookies); Vegan cakes; Doughnuts; Cookies; Almond cookies; Fried dough cookies; Cheeseburgers [sandwiches]; Hamburger sandwiches; Hot dog sandwiches; Hamburgers in buns; Hamburgers contained in bread buns; Sandwich wraps [bread]; Buns; Bread buns; Bread and buns; vegan ice cream; Sandwich spread made from chocolate and nuts

Class 43 - Food preparation; Food preparation services; Restaurant reservation services; Food sculpting

Conclusion

64. The Opposition has been partially successful. Subject to any successful appeal:

- The application is **refused** in respect of the goods and services enumerated above at [61].
- The Application **may proceed** only in respect of the goods and services enumerated above at [63].

COSTS

65. Both parties have enjoyed a measure of success. There is therefore no order as to costs.

Dated this 6th day of October 2022

N. R. Morris
For the Registrar,
the Comptroller-General