

O/966/22

TRADE MARKS ACT 1994

**IN THE MATTER OF INTERNATIONAL REGISTRATION NO. 1595416
IN THE NAME OF BISSCHOP 459, BESLOTEN VENNOOTSCHAP FOR THE
TRADE MARK**



IN CLASSES 29, 30, 31, 32 AND 35

AND

THE OPPOSITION THERETO UNDER NUMBER 428482

BY

MONSTER ENERGY COMPANY

Background

1. On 6 April 2021, claiming a Benelux priority date of 9 October 2020, Bisschop 459, Besloten Vennootschap (“the holder”) requested protection in the UK of International Registration (“IR”) number 1595416 for goods and services in classes 29, 30, 31, 32 and 35, claiming the colours green and white.¹

2. The request for protection was published for opposition purposes in the *Trade Marks Journal* on 27 August 2021. The IR was opposed under sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”) by Monster Energy Company (“the opponent”).

3. The opponent relies upon some of the goods covered by three earlier trade mark registrations, claiming a likelihood of confusion between the parties’ marks under section 5(2)(b):²

(i) 3254978:



Filing date: 6 September 2017; date registration procedure completed: 1 December 2017. Relying on goods in classes 29, 30 and 32.

(ii) 3350872:



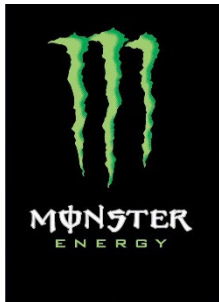
¹ The full specification of the IR is shown in Annex 1.

² The full specifications of the earlier marks are shown in Annex 2.

Filing date: 5 November 2018; priority date (EUIPO) 8 May 2018; date registration procedure completed: 1 March 2019.

Relying on goods in class 32.

(iii) 917923806



Filing date: 27 June 2018; date registration procedure completed: 27 October 2018.

Relying on goods in classes 29 and 30.

4. The opponent relies on marks (i) and (ii) for its section 5(3) ground, claiming a reputation for the following Class 32 goods: *Energy drinks, sports drinks, fruit juice drinks, other non-alcoholic beverages* (mark (i)) and *Non-alcoholic beverages, namely carbonated and non-carbonated energy drinks, carbonated and non-carbonated sports drinks, and drinks enhanced with vitamins, minerals, nutrients, amino acids and/or herbs* (mark (ii)). The opponent claims that its reputation in its marks is such that the relevant public will believe they are used by the same undertaking or an economically linked undertaking. The opponent also claims that use of the holder's mark will tarnish the reputation of the earlier marks, erode their distinctiveness, and give an unfair advantage to the holder by virtue of the reputation of the earlier marks.

5. The opponent's section 5(4)(a) ground is based upon its use of two signs which correspond to its earlier trade marks 3254978 and 3350872. It claims use of these signs in the UK since 2008 in relation to *drinks*. The opponent claims that its goodwill entitles it to prevent the use of the holder's mark under the law of passing off.

6. The holder filed a defence and counterstatement, denying all the grounds.

7. Only the opponent filed evidence, and only the opponent filed written submissions in lieu of a hearing. The opponent is represented by Bird & Bird LLP. The holder is represented by BAP IP BV. I make this decision after a careful reading of all the papers, referring to the evidence and submissions as necessary.

Decision

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

“(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.”

9. Section 5(3) of the Act states:



“(3) A trade mark which-

is identical with or similar to an earlier trade mark, shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark”.

10. Section 5(3A) states

“(3A) Subsection (3) applies irrespective of whether the goods and services for which the trade mark is to be registered are identical with, similar to or not similar to those for which the earlier trade mark is protected.”

11. Sections 5(2)(b) and 5(3) of the Act require the parties' marks to be similar. The marks are reproduced below.

Earlier marks	IR
	



12. 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 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. 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.

13. Earlier marks (i) and (ii) consist of three, solid, vertical, jagged and tapering lines. The marks look like long, narrow, jagged slashes or scratches made by claws, of different lengths, broader at the top, then tapering, with horizontal elements at the top of each slash, pointing towards the left. The right-hand slash does not touch the middle one, whereas the other two slashes touch at the top. The marks are asymmetrical. The claw-device is green on plain rectangular black backgrounds in marks (ii) and (iii). Earlier mark (iii) has the additional elements MONSTER ENERGY, which are co-dominant with the claw device. The 'O' of Monster looks like a rune. The overall impression of all three marks is dominated by the claw device, although the MONSTER element of mark (iii) is almost as dominant.

14. The IR consists of a squat, sturdy letter M, the two outside uprights of which are of equal width until they meet the downstrokes near the top of the letter. The downstrokes meet in the middle, halfway down the height of the letter. The letter is symmetrical, i.e. a mirror image of its two halves, with the middle upright buttressed by thick uprights at either side, which are of equal length. The letter is presented on a white background, formed by the shape of the border which surrounds the letter M, reminiscent of a keyhole. The letter and the border are in green (there being a colour claim to green and white.)

15. The IR's colour claim does not affect the comparison because the earlier marks are not limited to colour. However, all the other characteristics of the parties' marks, set out above, represent significant differences between them. The overall impressions are entirely different.

16. The opponent submits that the parties' marks are visually "highly similar" as they coincide in a large M device, with highly similar "boxes", and the marks are also aurally and conceptually identical or highly similar. Taking the combined effect of the differences listed above, I do not consider them to be visually similar. In *Errea Sport S.P.A. v The Royal Academy of Arts*, BL O/010/16, Mr Iain Purvis QC, sitting as the Appointed Person, considered an appeal concerning the following two trade marks:

Earlier mark	Later mark
	

17. In that case, the Hearing Officer decided that there was no visual similarity between the marks. On appeal, the opponent contended that the earlier mark would be understood as consisting of the letters RA and that, therefore, the marks should have been found to be visually similar to at least a low degree. Mr Purvis QC stated:

“11. I do not accept this. First of all, it seems to me to be a matter of semantics rather than substance. There is no doubt that the Hearing Officer was proceeding on the basis that the average consumer would understand the letters RA to be conveyed by the earlier mark. Indeed she makes the point herself on more than one occasion. When she states that there is no visual similarity between the marks, she cannot therefore be taken to have forgotten this point. Similarly, she cannot be taken to have forgotten it when considering the overall ‘global’ question of whether the average consumer is likely to be confused.

12. Secondly, the difference between ‘no visual similarity’ and ‘a low degree of visual similarity’ is not only impossible to define but quite subjective. It is hard to imagine a case in which the spread of reasonable opinions about visual similarity could not cover both of these characterisations. This is not, therefore, fertile ground upon which to base an alleged error of principle.

13. Thirdly, I do not have any difficulty with the notion (which Mr Stobbs appeared to be contending was illogical) that two representations of the same thing may have no visual similarity. In the world of art, the visual representation

of a horse in Picasso's Guernica has little or nothing in common with the visual representation of a horse in one of George Stubbs' portraits. I do not think it unreasonable to say that they have no visual similarity, whilst having some limited conceptual similarity (they are both paintings of horses).

14. I therefore do not consider that the Hearing Officer's Decision is undermined by the alleged error of principle identified in the Grounds of Appeal."

18. Even if the average consumer perceives the earlier marks as comprising or containing an M, they are not at all visually similar to the IR. This is analogous to the Picasso and George Stubbs horses. If both marks are perceived as the letter M, that may be a point of conceptual similarity (but see below). The mere fact that both parties' marks contain 'M's does not, of itself, make them visually similar.

19. I think it unlikely that the average consumer would perceive the earlier marks as a letter M. The devices have more in common with a claw device and I consider that it looks like marks left by claws. However, if the earlier marks would be perceived as an M by some consumers, this would make the marks aurally identical. As I have said, the more likely scenario is that the earlier marks will be seen as devices of claw marks and not articulated.

20. The later mark contains a stylised M. I have already found that the earlier marks look far more like claw marks than a stylised letter M. This would make the marks conceptually dissimilar. Single letters are not usually regarded as having a concept.³ Even if the earlier marks are seen as an M, the marks are conceptually neutral.

21. My primary finding is that the marks are not similar. The consequence of this is that the section 5(2)(b) and 5(3) grounds fail. In case there is a degree of similarity, albeit extremely low, I will look at whether the section 5(2)(b) and/or 5(3) grounds succeed, before turning to the section 5(4)(a) claim.

³ For example, *Poloplast GmbH & Co. KG v OHIM*, GC, Case T-189/09, at paragraph 83.

Section 5(2)(b)

22. The following caselaw from the Court of Justice of the European Union (“CJEU”) sets out the principles to be borne in mind when deciding whether there is a likelihood of confusion: *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-334/05 P and *Bimbo SA v OHIM*, Case C-591/12 P.⁴

Comparison of goods and services

23. The opposed goods in class 32 are *Beers; non-alcoholic beverages; mineral and aerated waters; fruit beverages and fruit juices; syrups and other non-alcoholic preparations for making beverages*. The holder’s *non-alcoholic beverages* covers the opponent’s energy drinks (mark (i)) and non-alcoholic beverages, namely carbonated and non-carbonated energy drinks (mark (ii)), which makes these goods identical.⁵ Mark (iii) does not cover class 32. I will start by considering a likelihood of confusion in relation to these goods because they are identical and are the goods in relation to which the opponent has filed evidence of a reputation (see below).⁶ If the opponent does not succeed on this basis, it will be no better off in relation to any of the other respective goods or services.

⁴ 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.

⁵ *Gérard Meric v OHIM*, Case T-33/05, General Court (“GC”).

⁶ Paragraph 51 of the opponent’s written submissions in relation to distinctiveness refers only to use of goods in class 32.

The average consumer and the purchasing process

24. The average consumer for such goods is the general public. 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. For the goods in question, the level of attention during the purchasing process is average. It may be more than average for those seeking particular nutritional requirements or allergy indications. The purchasing process will be primarily visual, even in relation to drinks which, if asked for in a bar, will still be seen in cans or bottles during the purchasing process.⁷

Distinctive character of the earlier marks

25. 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.⁸ However, the distinctive character of the earlier mark will only increase the likelihood of confusion where the distinctiveness is provided by an aspect of the mark which has a counterpart in the later mark. If distinctiveness is provided by an element which is not common to the later mark, it will not increase the likelihood of confusion and is more likely to point away from it.⁹ As I have said earlier in this decision, I consider the parties' marks to have nothing in common. However, in the (unlikely) event that the earlier marks will bring to mind a letter M, I will make an assessment of distinctive character, again considering earlier marks (i) and (ii). I will begin by considering the inherent distinctive character of the earlier marks *per se*, bearing in mind the guidance of the CJEU in *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*.¹⁰

⁷ *Rani Refreshments FZCO v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-523/12 and *Simonds Farsons Cisk plc v OHIM*, Case T-3/04, both General Court.

⁸ *Sabel BV v Puma AG*, Case C-251/95.

⁹ See *Kurt Geiger v A-List Corporate Limited* BL O-075-13 at paragraphs 38 to 39, Mr Ian Purvis QC, sitting as the Appointed Person.

¹⁰ Case C-342/97.

26. The device brings to mind a claw slash or scratch marks. There are no descriptive or allusive connections between the marks and the goods upon which the opponent relies. This makes them highly distinctive marks. Even if some consumers may see the marks as resembling an M, they are still fairly high in distinctive character because the distinctiveness is attributable to the particularly heavy stylisation, rather than to it being a letter (single letters are usually regarded as being relatively low in inherent distinctiveness).¹¹

27. The opponent has filed evidence from Paul J. Dechary, its Executive Vice President and Deputy General Counsel.¹² The only item in the specifications of the earlier marks relied upon which has been the subject of use is energy drinks. I do not intend to summarise the entire evidence, which comprises 311 pages, including a densely typed, twenty page, witness statement. It is enough to note the following:

- Sales in the UK of energy drinks which bore the marks grew from €79.9 million in 2012 to €189 million in 2019;
- 1.6 billion cans of energy drinks which bore the marks were sold in the UK between 2012 and 2020;
- The opponent's energy drinks bearing the marks are sold in the UK in over 50,000 retail stores and in over 7,600 pubs;
- At the relevant date, the opponent's energy drinks bearing the marks accounted for about a 20% share of the UK market for energy drinks;
- Between 2011 and 2019, the opponent spent \$444 million in the UK on advertising its marks in relation to energy drinks.

28. Much of the use of the marks is in the following form (i.e. with additional matter):



¹¹ See *BORCO-Marken-Import Matthiesen GmbH & Co. KG v OHIM* Case C-265/09 P, CJEU.

¹² Witness statement dated 18 May 2022 and exhibits.

29. However, in *Société des Produits Nestlé SA v Mars UK Ltd*, Case C-353/03, the CJEU held that a mark may acquire a distinctive character as a result of it being used as part of, or in conjunction with, another mark. The CJEU stated in *Specsavers v Asda* Case C-252/12, at paragraph 23, that it is necessary that “the relevant class of persons actually perceive the product or service at issue as originating from a given undertaking.” The earlier marks (i) and (ii) are a dominant and distinctive element of the composite mark (corresponding to mark (iii)), but, in any event, the manner in which the marks have been used will have made an independent impression on consumers, leading them to perceive the goods as originating from a given undertaking. Consequently, the co-branding is not a bar to earlier marks (i) and (ii) having a claim to enhanced distinctive character through the use made of them for energy drinks (which the third earlier mark does not cover). Given the size of turnover and marketing figures in the UK prior to the relevant date, I find that earlier marks (i) and (ii) are entitled to a claim to enhanced distinctiveness for energy drinks. Having said that, I have already found that the inherent distinctiveness of the marks is high, even without the benefit of use. The extensive use of green, as in earlier mark (ii), forms part of the enhanced distinctiveness.

Likelihood of confusion

30. Deciding whether there is a likelihood of confusion is not scientific; it is a matter of considering all the factors, weighing them and looking at their combined effect, in accordance with the authorities set out earlier in this decision. One of those principles states that a lesser degree of similarity between goods and services may be offset by a greater degree of similarity between the trade marks, and vice versa. I am proceeding on the basis that the goods are identical and also that the earlier marks are high in inherent distinctive character and even higher in relation to energy drinks. I have found that the goods will be bought by the general public with an average degree of attention (at the lower level). The opponent submits that the attention level will be low. I do not accept that, but to give the opponent its best case, I will test the likelihood of confusion on the basis that the opponent is right about the level of purchasing attention being low.

31. The goods will be bought primarily visually. There is no visual similarity between the marks. Even if they were considered to be aurally and conceptually identical (assuming I am wrong that there is no conceptual similarity), the visual differences are too great to override the aural and conceptual identity. The impression left upon the mind of the average consumer will be entirely different, even paying a low degree of attention. In the *RA* case referred to earlier in this decision, Mr Purvis QC went on to say, in response to the opponent's argument that both parties' goods would be asked for as 'RA' goods, that in the case of a heavily stylised earlier mark, "...taking the aural similarities alone tends to ignore the real substance and distinctive character of the mark and is likely to lead to an erroneous result." That is the case here. Even if the goods are asked for as 'M', they will also be seen during the purchase. Moreover, any conceptual identity based upon the letter M will not be strong enough to displace the recollection of two entirely different visual impressions, even allowing for imperfect recollection and a low level of attention. Far more likely is that the earlier marks will create an impression of claw marks and this is what will remain in the mind of the average consumer as the conceptual message, or hook, of the earlier marks. Neither party's marks will bring each other to mind. There is no likelihood of confusion. My finding applies to all of the opponent's earlier marks, including taking into account the distinctiveness attached to the opponent's marks when used in green. As the opponent has not succeeded on the basis of identical goods, it will be in no better position for goods found to be only similar, or, not similar at all, so it is unnecessary to consider the other goods. **The ground of opposition under section 5(2)(b) fails.**

Section 5(3) of the Act

32. The relevant case law can be found in the following judgments of the CJEU: Case C-375/97, *General Motors*, [1999] ETMR 950, Case 252/07, *Intel*, [2009] ETMR 13, Case C-408/01, *Adidas-Salomon*, [2004] ETMR 10 and Case C-487/07, *L'Oreal v Bellure* [2009] ETMR 55 and Case C-323/09, *Marks and Spencer v Interflora*. The conditions of section 5(3) are cumulative. Firstly, the opponent must show that its marks are similar to the holder's mark. Secondly, that the earlier marks have achieved a level of knowledge/reputation amongst a significant part of the public. Thirdly, it must be established that the level of reputation and the similarities between the marks will cause the public to make a link between them, in the sense of the earlier marks

being brought to mind by the later mark. Fourthly, assuming that the first three conditions have been met, section 5(3) requires that one or more of the three types of damage claimed will occur. It is unnecessary for the purposes of section 5(3) that the goods and services be similar, although the relative distance between them is one of the factors which must be assessed in deciding whether the public will make a link between the marks.

33. I found earlier in this decision that the marks are not similar which means that the first condition is not satisfied. However, in case I am wrong about that, I will look further at this ground, as I did for section 5(2)(b) of the Act.

34. The next condition is reputation. Reliance upon this ground requires evidence of a reputation amongst a significant part of the relevant public (*General Motors*). The opponent relies upon a wider range of goods in class 32 than energy drinks. Whilst I do not accept that the opponent can rely upon all the goods for which it has stated it has a reputation, I do accept that the evidence supports a finding that the opponent's energy drinks which bear the earlier marks relied upon for this ground (marks (i) and (ii)) have a reputation amongst a significant part of the relevant public in the UK.

35. The next requirement is that the relevant public will make a link between the marks. It is unnecessary for there to be a likelihood of confusion to find a link (*Adidas-Salomon*), but for a link to be made the earlier marks must be brought to mind by the relevant public when encountering the later mark (*Intel*). Even with the *Intel* factors in its favour, such as a high degree of distinctive character, a strong reputation and identical goods (energy drinks versus the holder's non-alcoholic beverages), a link would not be made. The assessment of similarity between the marks is undertaken in the same way as for section 5(2)(b) of the Act, by reference to the visual, aural and conceptual similarities or differences between the marks (*Adidas-Salomon*). The level of similarity may be less than is necessary for a likelihood of confusion, but there must still be a sufficient degree of similarity for a link to be made.¹³ I find that the marks are visually entirely different and in the unlikely event that the earlier marks would be perceived by the relevant public as an M, the possible aural and conceptual identity

¹³ *Intra-Press SAS v OHIM*, Joined cases C-581/13 P & C-582/13 P, CJEU.

would not override the entirely different visual perception of the marks such that the earlier marks would be brought to mind by the IR. There would not even be a fleeting bringing to mind: it would not happen at all. As the conditions are cumulative, without a link there can be no damage. **The ground of opposition under section 5(3) fails.**

Section 5(4)(a) of the Act: passing off

36. Section 5(4)(a) states:

“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)...

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.”

37. The three elements which the opponent must show are well known: goodwill; misrepresentation leading to deception or a likelihood of deception; and, damage resulting from the misrepresentation.¹⁴

38. Even finding, as I do, that the opponent has demonstrated a substantial level of goodwill in the UK in relation to its signs for energy drinks, the opponent faces the issue that the marks are entirely different visually for goods that are primarily bought visually. Although the test for misrepresentation requires that a substantial number of members of the public are deceived rather than whether the average consumer is confused, it has been recognised in *Marks and Spencer PLC v Interflora* that it is

¹⁴ *Discount Outlet v Feel Good UK*, [2017] EWHC 1400 (IPEC), Her Honour Judge Melissa Clarke, sitting as a deputy Judge of the High Court.

doubtful whether the difference between the legal tests will produce different outcomes.¹⁵ In the present case, there would be no misrepresentation, no deception and no damage to the opponent's business, even in relation to identical goods, for the reasons given earlier. The opponent's position here is no better than under its section 5(2)(b) ground; in fact, it is worse because there is a lack of evidence of trade in relation to anything other than energy drinks. **The section 5(4)(a) ground fails.**

Overall outcome

39. The opposition fails under all the grounds. The request for protection in the UK of the international registration is granted.

Costs

40. The holder has been successful and is entitled to a contribution towards the costs of the proceedings. Costs are usually based upon the scale of costs published in Tribunal Practice Notice 2/2016, the scale allowing for the range of procedural and substantive issues that are generally found in cases before this Tribunal. The evidence was voluminous, partly referred to US and EU use which is irrelevant, and supported reputation and goodwill only in relation to energy drinks, despite the reliance on wider goods for sections 5(3) and 5(4)(a). This was unfocused and would have increased the holder's costs. Accordingly, I award costs towards the top of the scale for considering the opponent's evidence.

41. The breakdown of the cost award is as follows:

Considering the opposition and filing the counterstatement	£350
Considering the opponent's evidence	£2000

¹⁵ [2012] EWCA (Civ) 1501

Total

£2350

42. I order Monster Energy Company to pay Bisschop 459, Besloten Vennootschap the sum of **£2350**. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 7th day of November 2022

Judi Pike

For the Registrar,

the Comptroller-General

Annex 1: specification of the IR

Class 29: Meat, fish, poultry and game; meat extracts; preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs; milk, cheese, butter, yoghurt and other milk products; oils and fats for food.

Class 30: Coffee, tea, cocoa and artificial coffee; rice, pasta and noodles; tapioca and sago; flour and preparations made from cereals; bread, pastries and confectionery; chocolate; ice cream, sorbets and other edible ices; sugar, honey, treacle; yeast, baking-powder; salt, seasonings, spices, preserved herbs; vinegar, sauces and other condiments; ice (frozen water).

Class 31: Raw and unprocessed agricultural, aquacultural, horticultural and forestry products; raw and unprocessed grains and seeds; fresh fruits and vegetables, fresh herbs; natural plants and flowers; bulbs, seedlings and seeds for planting; live animals; foodstuffs and beverages for animals; malt.

Class 32: Beers; non-alcoholic beverages; mineral and aerated waters; fruit beverages and fruit juices; syrups and other non-alcoholic preparations for making beverages.

Class 35: Wholesale and retail services in relation to food and drinks.

Annex 2: specifications of the earlier trade marks relied upon for sections 5(2)(b) and 5(3). Goods relied upon for section 5(3) are underlined in relation to 3254978 and 3350872

(i) *3254978*

Class 29: Dairy-based beverages and milk-based beverages containing coffee, chocolate and/or fruit juice; shakes.

Class 30: Ready to drink tea, iced tea and tea based beverages; ready to drink flavored tea, iced tea and tea based beverages; ready to drink coffee, iced coffee and coffee based beverages; ready to drink flavored coffee, iced coffee and coffee based beverages; rice; tapioca and sago; flour and preparations made from cereals; bread, pastry and confectionery; ices; sugar, honey, treacle; yeast, baking-powder; salt; mustard; vinegar, sauces (condiments); spices; ice.

Class 32: Energy drinks, sports drinks, fruit juice drinks, other non-alcoholic beverages.

(ii) *3350872*

Class 32: Non-alcoholic beverages, namely carbonated and non-carbonated energy drinks, carbonated and non-carbonated sports drinks, and drinks enhanced with vitamins, minerals, nutrients, amino acids and/or herbs.

(iii) *917923806*

Class 29: Dairy-based beverages and milk-based beverages containing coffee, chocolate and/or fruit juice; shakes.

Class 30: Coffee, tea, cocoa and artificial coffee; coffee-based beverages; tea-based beverages; chocolate-based beverages; rice; tapioca and sago; flour and preparations made from cereals; bread, pastry and confectionery; edible ices; sugar, honey, treacle; yeast, baking-powder; salt; mustard; vinegar, sauces (condiments); spices; ice.