

O/0285/23

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. UK00003684311
BY MARK FRANK GREEN TO REGISTER THE FOLLOWING TRADE MARK:**

Green's

IN CLASSES 2, 18, 24, 25, 28, 32, 35, 37, 41, 43 AND 44

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 431610 BY GREEN COLA LTD**

Background and Pleadings

1. On 20 August 2021, Mark Frank Green ('the Applicant'), filed an application to register the following trade mark:

Green's

2. The application was published for opposition purposes in the *Trade Marks Journal* on 3 December 2021. Registration is sought in respect of goods and services in classes 2, 18, 24, 25, 28, 32, 35, 37, 41, 43 and 44. The full specification can be found in the Annex to this decision.
3. On 3 March 2022, the application was opposed by Green Cola LTD ('the Opponent') based on section 5(2)(b) of the Trade Marks Act 1994 ('the Act').¹ The Opposition is directed only against the following goods and services in the Applicant's specification:

Class 32	<i>Whey beverages; Fruit beverages; Sherbets [beverages]; Sherbet beverages; Sorbets [beverages]; Beverages (Whey -); Waters [beverages]; Isotonic beverages; Soy beverage.</i>
Class 43	<i>Food preparation services; Hotel restaurant services; Restaurant services provided by hotels; Bar and restaurant services; Restaurant services; Restaurant and bar services; Hotel services; Providing hotel and motel services; Udon and soba restaurant services; Restaurant information services; Ramen restaurant services; Hotels and motels; Carvery restaurant services; Providing restaurant services; Self-service restaurants; Self-service restaurant services; Restaurant reservation services; Washoku restaurant services; Mobile restaurant services;</i>

¹ The Opposition was initially also based on sections 5(3) and 5(4)(a) of the Act. These grounds were subsequently withdrawn by the Opponent. The Opposition proceeds on the basis of section 5(2)(b) only.

Japanese restaurant services; Spanish restaurant services; Tempura restaurant services; Hotel accommodation services; Hotel catering services; Resort hotel services; Restaurants (Self-service -); Sushi restaurant services; Pet hotel services; Hotel reservation services; Reservation and booking services for restaurants and meals; Restaurants; Take-out restaurant services; Fast-food restaurant services; Hotels; Hotel room booking services; Salad bars [restaurant services]; Hotel accommodation reservation services; Providing room reservation and hotel reservation services; Booking services for hotels; Grill restaurants; Providing information about restaurant services; Hotel services for preferred customers; Resort hotels; Hotel information; Hotel reservations; Delicatessens [restaurants]; Tourist restaurants; Providing reviews of restaurants and bars; Restaurant services incorporating licensed bar facilities; Reservation of restaurants; Fast food restaurants; Providing accommodation in hotels and motels; Serving food and drink in restaurants and bars; Making reservations and bookings for restaurants and meals; Providing food and drink in restaurants and bars; Accommodation bureau services [hotels, boarding houses]; Electronic information services relating to hotels; Agency services for booking hotel accommodation; Consultancy services relating to hotel facilities; Agency services for reservation of restaurants; Travel agency services for booking restaurants; Booking agency services for hotel accommodation; Provision of food and drink in restaurants; Providing hotel accommodation; Carry-out restaurants; Hotels, hostels and boarding houses, holiday and tourist accommodation; Arranging hotel accommodation; Travel agency services for making hotel reservations; Travel agency services for reserving hotel accommodation; Hotel reservation services provided via the Internet; Serving food and drink for guests in restaurants; Providing food and drink for guests in restaurants; Provision of hotel accommodation; Information

	<p><i>relating to hotels; Reservation of hotel accommodation; Providing reviews of restaurants; Appraisal of hotel accommodation; Booking of restaurant seats; Booking of hotel accommodation; Restaurant services for the provision of fast food; Arranging of hotel accommodation; Providing exhibition facilities in hotels; Rental of curtains for hotels; Arranging of meals in hotels; Making hotel reservations for others; Reservation of accommodation in hotels; Rental of furniture for hotels; Accommodation bureaux [hotels, boarding houses]; Rental of towels for hotels; Provision of information relating to restaurants; Provision of information relating to hotels; Booking of hotel rooms for travellers; Rental of floor coverings for hotels; Rental of wall hangings for hotels; Providing hotel information via a website; Bed and breakfast services.</i></p>
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4. The Opponent relies on the following nine earlier registrations:²

i) UK00918227952



Filing date: 21 April 2020

Date of entry in register: 1 Sept 2020

Class 32:

*Carbonated and non-carbonated soft drinks; non-alcoholic drinks.*³

ii) UK00003701641

² A tenth earlier registration, UK00914449111, was initially relied upon but subsequently withdrawn by the Opponent.

³ The specification is the same for all nine earlier marks relied upon.



Filing date: 27 Sept 2021

Date of entry in register: 25 Feb 2022

Priority date: 19 Oct 2020 (from EUIPO).

iii) UK00918228146



Filing date: 21 April 2020

Date of entry in register: 1 Sept 2020

iv) UK00003701651



Filing date: 27 Sept 2021

Date of entry in register: 25 Feb 2022

Priority date: 26 October 2020 (from EUIPO)

v) UK00917950622



Filing date: 6 Sept 2018

Date of entry in register: 12 Jan 2012

vi) UK00917950625



Filing date: 6 Sept 2018

Date of entry in register: 12 Jan 2012

vii) UK00918039763



Filing date: 22 March 2019

Date of entry in register: 15 August 2019

viii) UK00918065928



Filing date: 16 May 2019

Date of entry in register: 19 Sept 2019

ix) UK00917927770



Filing date: 6 July 2018

Date of entry in register: 23 Nov 2018

The Opponent relies upon all of its class 32 goods.

5. The Opponent claims that:

- the parties' class 32 goods are identical;
- the Applicant's class 43 services are similar to the Opponent's goods;
- the Applicant's mark is visually and phonetically similar to each of the Opponent's earlier marks;
- the dominant and distinctive element of each of the Opponent's marks is the prefix 'GREEN' owing to the descriptive nature of the words: 'moctails' (present in two of the earlier marks), 'mocktails' (present in two of the earlier marks), 'lemonade', 'orangeade', 'tonic water', 'lemon lime' and 'sour cherry';
and
- there is a likelihood of confusion between the parties' marks.

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

- denies that the marks are visually and phonetically similar;
- denies that the parties' goods and services are similar;
- accepts that the words 'moctails', 'mocktails', 'lemonade', 'orangeade', 'tonic water', 'lemon lime' and 'sour cherry' are descriptive, but argues that this would not result in the Opponent's marks being shortened because the average consumer would not ask for a 'Green' but a 'Green lemonade', for example;
and
- denies that there is a likelihood of confusion between the parties' marks.

7. The Opponent is represented by Murgitroyd & Company. The Applicant is represented by TR Intellectual Property LTD. Neither party has filed evidence. Both parties filed written submissions in the evidence round. A hearing was neither requested nor thought necessary. Neither party has filed written submissions in lieu of a hearing. I will not summarise the parties' written submissions here, but I confirm that I have read them and will refer to them where necessary in my decision. The following decision has been made after careful consideration of the papers before me.

Preliminary issue

8. Actual confusion in the marketplace

The Applicant has submitted that the Opponent '[...]' has provided no examples of confusion, and that it is therefore highly likely that no instances of confusion have arisen. The Applicant has been actively trading since September 2019. It is certainly not aware of any'.⁴ Whilst this submission is noted, it is not incumbent on the Opponent to adduce evidence of actual confusion between the parties' marks. Kitchen L.J. stated, in the case of *Roger Maier and Another v ASOS*, [2015] EWCA Civ 220, that:

"80.the likelihood of confusion must be assessed globally taking into account all relevant factors and having regard to the matters set out in *Specsavers* at paragraph [52] and repeated above. If the mark and the sign have both been used and there has been actual confusion between them, this may be powerful evidence that their similarity is such that there exists a likelihood of confusion. But conversely, the absence of actual confusion despite side by side use may be powerful evidence that they are not sufficiently similar to give rise to a likelihood of confusion. This may not always be so, however. The reason for the absence of confusion may be that the mark has only been used to a limited extent or in relation to only some of the goods or services for which it is registered, or in such a way that there has been no possibility of the one being taken for the other. So there may, in truth, have been limited opportunity for real confusion to occur."

9. I also note that in *The European Limited v The Economist Newspaper Ltd* [1998] FSR 283 Millett L.J. stated that:

"Absence of evidence of actual confusion is rarely significant, especially in a trade mark case where it may be due to difference extraneous to the plaintiff's registered trade mark".

⁴ Applicant written submissions, paragraph [36].

Decision

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

10. 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.”

11. In accordance with section 6 of the Act, the Opponent’s marks are earlier marks by virtue of their earlier filing dates or priority dates each of which fell before the filing date of the Applicant’s mark (20 August 2021).

12. 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 each of the Opponent’s marks had been registered for less than 5 years on the date on which the Applicant filed its Application for the registration of its mark. The Opponent is therefore entitled to rely upon all of the goods that it seeks to rely upon.

13. The following principles are derived from the decisions of the Court of Justice of the European Union⁵ (“CJEU”) in *Sabel BV v Puma AG*, Case C-251/95; *Canon*

⁵ 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

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:

(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

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.

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

14. 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.

15. The CJEU in *Canon*, Case C-39/97, stipulates that all relevant factors relating to the 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”.

16. Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281⁶, identified the following factors for assessing similarity of the respective goods and services:

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;
- (d) The respective trade channels through which the goods or services reach the market;
- (e) In the case of self-serve consumer items, where in practice they are 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.

⁶ *British Sugar Plc v James Robertson & Sons Ltd* [1996] R. P. C. 281, pp 296-297.

17. Goods (or services) may be grouped together for the purposes of assessment, as Geoffrey Hobbs QC, sitting as the Appointed Person, said in *Separode Trade Mark* BL O-399-10:

“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.”

18. In making an assessment between the competing services, I bear in mind the decision of the General Court 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”.

19. In construing the terms used in the parties' specifications, I will follow the guidance of Floyd J. (as he then was) in *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch):

"... 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."

20. The Applicant's goods and services can be found at paragraph [3] and the Opponent's goods can be found at paragraph [4].

Class 32

Applicant's goods: *Whey beverages; Fruit beverages; Sherbets [beverages]; Sherbet beverages; Sorbets [beverages]; Beverages (Whey -); Waters [beverages]; Isotonic beverages; Soy beverage.*

21. The Opponent has submitted that the parties' class 32 goods are identical. I agree. The Applicant's goods are all non-alcoholic beverages. Each of the Applicant's terms will be encompassed by each of the Opponent's broad terms *Carbonated and non-carbonated soft drinks* and *non-alcoholic drinks*. The parties' goods are therefore 'Meric' identical.

Class 43

22. The Opponent has submitted that the Applicant's 'class 43 services are similar to that [sic] of the opponent's goods in class 32 in that the Applicants [sic] establishments of hotels, restaurants, takeaway services are also likely to sell the Applicants [sic] class 32 goods of soft drinks. Indeed, establishments that offer food by their very nature also offer drinks and as such, the two go together in that they are complimentary [sic] in nature.' Whilst this submission is noted, it is not necessarily the case that goods and services available from the same premises are complementary.

Applicant's services: *Hotel restaurant services; Restaurant services provided by hotels; Bar and restaurant services; Restaurant services; Restaurant and bar*

services; Udon and soba restaurant services; Ramen restaurant services; Carvery restaurant services; Providing restaurant services; Self-service restaurants; Self-service restaurant services; Washoku restaurant services; Mobile restaurant services; Japanese restaurant services; Spanish restaurant services; Tempura restaurant services; Restaurants (Self-service -); Sushi restaurant services; Restaurants; Take-out restaurant services; Fast-food restaurant services; Salad bars [restaurant services]; Grill restaurants; Delicatessens [restaurants]; Tourist restaurants; Restaurant services incorporating licensed bar facilities; Fast food restaurants; Serving food and drink in restaurants and bars; Providing food and drink in restaurants and bars; Provision of food and drink in restaurants; Carry-out restaurants; Serving food and drink for guests in restaurants; Providing food and drink for guests in restaurants; Restaurant services for the provision of fast food

23. I compare these services to the Opponent's *non-alcoholic drinks*. The essential purpose of the Applicant's services is the provision and/or serving of food and drink. The purpose of the Opponent's goods is the quenching of thirst. The parties' goods and services will therefore differ in purpose. Users and trade channels will overlap; the Opponent's non-alcoholic drinks will be consumed in restaurants or as takeaways. The goods and services will necessarily differ in nature; the Applicant's offerings being acts of service as opposed to the Opponent's tangible goods. There is no competition between the goods and services, neither being substitutable for the other. In my view, the Opponent's goods will include 'ready to drink' goods, e.g. lemonade, as well as non-alcoholic drinks that will be 'made up' in a bar or restaurant, such as non-alcoholic cocktails. To the extent that the Opponent's goods cover drinks that are 'made up' in a bar or restaurant, I find the parties' goods and services to be complementary. The Opponent's goods will be necessary for the Applicant to deliver its services and the average consumer may presume both to originate from the same undertaking. However, in my view, there will not be total complementarity between the Applicant's services and the Opponent's term as whole. To the extent that the Opponent's term covers 'ready to drink' beverages such as lemonade, although such goods would be important for the Applicant to deliver its services, I consider it unlikely that the average consumer would presume the same undertaking to be responsible for producing the lemonade, for example,

because restaurants and bars do not ordinarily sell such drinks under their own name. In light of the foregoing, I find the parties' goods and services to be similar to a low degree.

Applicant's services: *Food preparation services*

24. I compare the Applicant's services to the Opponent's *non-alcoholic drinks*. The Applicant's services entail the preparation of food. The purposes and methods of use of the parties' goods and services will be very different. Users will overlap somewhat: the general public might engage food preparation services when ordering a sandwich or salad to be freshly made in a deli, for example. The overlap will not be total, however. I consider that the services will be engaged just as frequently by the professional public; a restaurateur might engage the services of a chef, for example. 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 drinks. Trade channels may overlap somewhat; e.g. a deli or salad bar which prepares a sandwich/salad fresh to order will likely also sell non-alcoholic drinks. I do not consider the goods and services to be in a competitive relationship. I do not find complementarity, either; neither good nor service is necessary or important for the other, even if the average consumer did presume both parties' offerings to originate from the same undertaking. Despite the overlaps in user and trade channels, the distance in nature and purpose is, in my view, too great to support a finding of similarity between the goods and services. I find the parties' goods and services to be dissimilar.

Applicant's services: *Rental of curtains for hotels; Rental of furniture for hotels; Rental of towels for hotels; Rental of floor coverings for hotels; Rental of wall hangings for hotels*

25. I compare the Applicant's services to the Opponent's *non-alcoholic drinks*. The Applicant's services entail the offering for rental of furnishings, décor and towels for hotels. Having considered the purposes, users, trade channels, methods of use,

physical natures and whether there is any competition or complementarity between the parties' respective goods and services, I do not find any level of similarity. The Applicant's goods are dissimilar to the goods of the Opponent.

Applicant's services: *Pet hotel services*

26. The Applicant's services entail the provision of accommodation for pets. Having considered the purposes, users, trade channels, methods of use, physical natures and whether there is any competition or complementarity between the parties' respective goods and services, I do not find any level of similarity. The Applicant's goods are dissimilar to the goods of the Opponent.

Applicant's services: *Hotel reservation services; Hotel room booking services; Hotel accommodation reservation services; Providing room reservation and hotel reservation services; Booking services for hotels; Hotel reservations; Agency services for booking hotel accommodation; Booking agency services for hotel accommodation; Hotel reservation services provided via the Internet; Reservation of hotel accommodation; Booking of hotel accommodation; Reservation of accommodation in hotels; Booking of hotel rooms for travellers; Making hotel reservations for others; Travel agency services for making hotel reservations; Travel agency services for reserving hotel accommodation; Arranging of hotel accommodation; Arranging hotel accommodation*

27. The Applicant's services relate to the booking of hotel accommodation. The purpose of these services is to facilitate the booking of hotel accommodation, a purpose very different to that of the Opponent's goods. Having also considered the trade channels, methods of use, physical natures and whether there is any competition or complementarity between the parties' respective goods and services, I do not find any level of similarity. The Applicant's services are dissimilar to the goods of the Opponent.

Applicant's services: *Restaurant reservation services; Reservation and booking services for restaurants and meals; Reservation of restaurants; Making reservations and bookings for restaurants and meals; Agency services for*

reservation of restaurants; Travel agency services for booking restaurants; Booking of restaurant seats

28. The Applicant's services relate to the booking of tables at restaurants. The purpose of these services is to facilitate restaurant bookings, a purpose very different to that of the Opponent's goods. Users of services under the terms *Agency services for reservation of restaurants* and *Travel agency services for booking restaurants* will, in my view, be predominantly the general public. The remaining terms, to my mind, will include third-party services engaged by restaurants to manage their table reservations, as well as booking/reservation services provided by the restaurants themselves for customers to book directly. Although the end users of these services would be predominantly the general public, those purchasing the third-party services would be the professional public, i.e. the restaurants outsourcing the management of table reservations to the service provider. Having also considered the trade channels, methods of use, physical natures and whether there is any competition or complementarity between the parties' respective goods and services, I do not find any level of similarity. The Applicant's services are dissimilar to the goods of the Opponent.

Applicant's services: Hotel services; Providing hotel and motel services; Hotels and motels; Hotel accommodation services; Resort hotel services; Hotels; Resort hotels; Providing accommodation in hotels and motels; Providing hotel accommodation; Hotels, hostels and boarding houses, holiday and tourist accommodation; Provision of hotel accommodation; Bed and breakfast services; Hotel services for preferred customers

29. I compare these services to the Opponent's *non-alcoholic drinks*. The purpose of the Applicant's services is the provision of rooms for temporary accommodation. The Applicant's services will also, to my mind, often entail the provision of food and drink by way of breakfast. The parties' goods and services will therefore differ in purpose. Users and trade channels will overlap; the Opponent's non-alcoholic drinks will often be consumed by hotel guests. The goods and services will necessarily differ in nature; the Applicant's offerings being acts of service as opposed to the Opponent's tangible goods. There is no competition between the

goods and services, neither being substitutable for the other. In my view, the Opponent's goods will include 'ready to drink' goods, e.g. lemonade, as well as non-alcoholic drinks that will be 'made up', such as non-alcoholic cocktails or freshly squeezed juices. To the extent that the Opponent's goods cover drinks that are 'made up', I find the parties' goods and services to be complementary. The Opponent's goods will be important for the Applicant to deliver its services to the extent that they include the provision of breakfast and the average consumer may presume both parties' offerings to originate from the same undertaking. However, in my view, there will not be total complementarity between the Applicant's services and the Opponent's term as whole. To the extent that the Opponent's term covers 'ready to drink' beverages such as lemonade, although such goods would be important for the Applicant to deliver its services, I consider it unlikely that the average consumer would presume the same undertaking to be responsible for producing the lemonade. In light of the foregoing, I find the parties' goods and services to be similar to a low degree.

Applicant's services: *Accommodation bureaux [hotels, boarding houses]; Accommodation bureau services [hotels, boarding houses]*

30. The Applicant's services entail finding hotel or boarding house accommodation for clients. Having considered the purposes, users, trade channels, methods of use, physical natures and whether there is any competition or complementarity between the parties' respective goods and services, I do not find any level of similarity. The Applicant's services are dissimilar to the goods of the Opponent.

Applicant's services: *Hotel catering services*

31. The Applicant's services entail the provision of food and drink for events in hotels. I compare these services to the Opponent's *non-alcoholic drinks*. For the same reasons provided above at [24], I find the parties' goods and services to be dissimilar to a low degree.

Applicant's services: *Arranging of meals in hotels*

32. The Applicant's services, in my view, will be encompassed by the Applicant's term *Hotel catering services*. For the same reasons provided above at [24], I find the parties' goods and services to be dissimilar.

Applicant's services: Restaurant information services; Providing information about restaurant services; Hotel information; Electronic information services relating to hotels; Information relating to hotels; Provision of information relating to restaurants; Provision of information relating to hotels; Providing hotel information via a website

33. The Applicant's services, in my view, entail providing information to businesses whose core activity is the running of restaurants or hotels. The essential feature of the services is the provision of information; a very different purpose to that of the Opponent's goods. Having also considered the trade channels, methods of use, physical natures and whether there is any competition or complementarity between the parties' respective goods and services, I do not find any level of similarity. The Applicant's services are dissimilar to the goods of the Opponent.

Applicant's services: Providing reviews of restaurants and bars; Providing reviews of restaurants; Appraisal of hotel accommodation; Consultancy services relating to hotel facilities; Providing exhibition facilities in hotels

34. The Opponent has not made any submissions as to how these services might be similar to the Opponent's goods and no evidence has been filed. Without anything to guide me, and having considered the purposes, users, trade channels, methods of use, physical natures and whether there is any competition or complementarity between the parties' respective goods and services, I do not find any level of similarity. The Applicant's services are dissimilar to the goods of the Opponent.

35. Some similarity between the parties' goods and services is essential in order to find a likelihood of confusion between the parties' marks. In the case of *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA, Lady Justice Arden stated that:

'49..... I do not find any threshold condition in the jurisprudence of the Court of Justice cited to us. Moreover I consider that no useful purpose is served by holding that there is some minimum threshold level of similarity that has to be shown. If there is no similarity at all, there is no likelihood of confusion to be considered. If there is some similarity, then the likelihood of confusion has to be considered but it is unnecessary to interpose a need to find a minimum level of similarity'.

36. The opposition against the services that I have found to be dissimilar therefore fails at this point. The goods and services against which the opposition remains 'live' are as follows:

Class 32:	<i>Whey beverages; Fruit beverages; Sherbets [beverages]; Sherbet beverages; Sorbets [beverages]; Beverages (Whey -); Waters [beverages]; Isotonic beverages; Soy beverage.</i>
Class 43:	<i>Hotel restaurant services; Restaurant services provided by hotels; Bar and restaurant services; Restaurant services; Restaurant and bar services; Udon and soba restaurant services; Ramen restaurant services; Carvery restaurant services; Providing restaurant services; Self-service restaurants; Self-service restaurant services; Washoku restaurant services; Mobile restaurant services; Japanese restaurant services; Spanish restaurant services; Tempura restaurant services; Restaurants (Self-service -); Sushi restaurant services; Restaurants; Take-out restaurant services; Fast-food restaurant services; Salad bars [restaurant services]; Grill restaurants; Delicatessens [restaurants]; Tourist restaurants; Restaurant services incorporating licensed bar facilities; Fast food restaurants; Serving food and drink in restaurants and bars; Providing food and drink in restaurants and bars; Provision of food and drink in restaurants; Carry-out restaurants; Serving food and drink for guests in restaurants; Providing food and drink for guests in restaurants; Restaurant services for the provision of fast food; Hotel services;</i>

	<i>Providing hotel and motel services; Hotels and motels; Hotel accommodation services; Resort hotel services; Hotels; Resort hotels; Providing accommodation in hotels and motels; Providing hotel accommodation; Hotels, hostels and boarding houses, holiday and tourist accommodation; Provision of hotel accommodation; Bed and breakfast services; Hotel services for preferred customers; Hotel catering services; Arranging of meals in hotels</i>
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Average consumer and the purchasing act

37. The average consumer is deemed to be reasonably well-informed and reasonably observant and circumspect. The word “average” denotes that the person is typical. 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*.

38. I consider that the average consumer of the parties' class 32 goods will be predominantly the general public. A smaller number of purchases will be made by professional consumers in the course of their business e.g. pubs/bars/restaurants/hotels. The goods will be purchased either as sealed goods, for consumption at a time of the purchaser's choosing, from physical shops/supermarkets or online stores; or as 'ready-to-drink' beverages from a public house/bar/restaurant/cafe. Purchases made from physical shops will, in most cases, be visual in nature; the purchaser self-selecting the goods from shelves. Some purchases will be made aurally by way of requests to retail staff. In a pub or bar setting, the purchasing act will also be primarily visual; the purchaser surveying the goods displayed in a fridge or chiller, or seeing them listed in a menu, before making their choice. I acknowledge that some purchases will be made by way of aural requests to bar staff. In my view, the average consumer will pay an average degree of attention when purchasing the goods. These goods are 'every day' frequent purchases with low price points.

39. I consider the average consumer of the class 43 services that come into play in this opposition to be predominantly the general public. Broadly speaking, the services cover restaurant services and hotel services. Many of the services, particularly hotel room bookings, will be booked online or by telephone. A number of bookings will be made by way of 'walk-ins'. The purchasing act will be primarily visual in most cases, the purchaser having likely encountered the service provider's mark on its website or signage on the premises, before purchasing the service. I acknowledge that there will be an aural aspect to the purchasing act by way of word-of-mouth recommendations. *Hotel catering services* will, to my mind, in many cases, be purchased by the general public, however I consider that the proportion of corporate bookings from the professional public will be greater for these services than for the other class 43 services. With the exception of *Hotel catering services*, I consider the attention level of the average consumer to be average. Hotel and restaurant bookings, or 'walk-ins' to make bookings (e.g. hotel rooms) or purchase the services (e.g. restaurants) are not infrequent purchases and do not typically involve a high level of deliberation before completing a transaction. For *Hotel catering services*, I consider that the level of attention paid during the purchasing process will be above average. The purchaser, in many cases, is likely to discuss its requirements with the service provider and, perhaps, obtain a quote, before committing to a purchase.

Comparison of the marks

Opponent's marks:	Applicant's mark:
i) UK00918227952 	
ii) UK00003701641	



iii) UK00918228146



iv) UK00003701651



v) UK00917950622



vi) UK00917950625



vii) UK00918039763



viii) UK00918065928



ix) UK00917927770



40. 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.”

41. 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.

Applicant's mark

42. The Applicant's mark consists of the word element 'Green's' rendered in a plain typeface. The characters are emboldened with an infill of green. Upon closer inspection of the mark, the green infill appears to be composed of abstract geometric shapes of varying green tones. However, I consider that this detail would elude many average consumers because the contrast between the tones is not greatly marked. The apostrophe appears to be in the shape of a leaf. However, due to the necessarily small size of an apostrophe, I consider that this, too, would go unnoticed by a significant number of average consumers. The overall impression of the mark resides in the mark in its entirety.

Comparison with Opponent's marks i) to iv)

43. The Opponent's marks i) to iv) comprise text and figurative elements that are stylistically very similar to each other. All four marks are dominated by the word element 'green' in a plain typeface in a white font, with similar additional figurative elements. The 'tail' of the 'g' and the 'curve' of the 'n' each extend to a flourish that might be said to resemble stylised foliage or tendrils. The word 'moctails' (marks i and iii) or 'mocktails' (marks ii and iv) appear beneath the word 'green' in the same colour and typeface, albeit in a much smaller size and without embellishment. On the left hand side of each mark is a device consisting of a bisected citrus fruit with leaves. Marks i and ii have a green background whereas marks iii and iv have a deep pink background. The backgrounds for all four marks are overlaid with bubbles. Marks ii and iv have a vertical orientation whereas marks i and iii have a horizontal orientation. In my view, orientation aside, the only material differences that the average consumer is likely to notice are: that the fruit depicted in marks i and ii is lime whereas that depicted in marks iii and iv is grapefruit; and that the backgrounds for marks i and ii are green as opposed to pink for marks iii and iv.

Comparison with Opponent's marks v) to ix)

44. The Opponent's marks v) to ix) comprise text and figurative elements that are stylistically very similar to each other. All five marks are dominated by the word element 'green' in a plain typeface, with similar additional figurative elements. The word 'green' has the same embellishment as described for marks i) to iv). Beneath

the word 'green' is a text element in a much smaller font which refers to the flavour or type of non-alcoholic drink: 'lemonade', 'orangeade', 'tonic water', 'lemon lime' and 'sour cherry', for the respective marks. All five marks have a black background and a device in the form of a tendril-like flourish, similar to the embellishment to the word 'green', which extends horizontally across the mark. In marks vii) and viii), the black background is overlaid by what might be described as bubbles or spray. In marks v), vi) and ix), at the top of each mark is what might be described as a trough-like shape to the right of which are two 'droplets'. These elements are coloured, for the respective marks, yellow, orange and red. In my view, the bubbles and the trough-like shapes are the only material differences that the average consumer is likely to notice between these of the Opponent's marks.

Visual comparison of the marks

45. Comparison against Opponent's marks i) to iv):

The parties' marks share the first five characters 'g', 'r', 'e', 'e', 'n', in that order. Both parties' marks are dominated by 'GREEN' or 'GREEN'S'. Both the Applicant's mark and the Opponent's marks i) and ii) are predominantly green in colour. Points of difference are:

- the presence of the apostrophe and 's' in the Applicant's mark, which are absent from the Opponent's marks;
- the presence of the embellishment on the 'g' and 'n' of the Opponent's marks, which are absent from the Applicant's mark;
- the presence of the abstract shapes of slightly varied tones in the infill of the characters comprising the Applicant's mark, that is absent from the Opponent's marks;
- the presence of the word elements 'mooxtails' or 'mocktails' in the Opponent's marks, that is absent from the Applicant's mark;
- the green or pink backgrounds and 'bubbles' in the Opponent's marks, that are absent from the Applicant's mark;
- the presence of the lime or grapefruit devices in the Opponent's marks, that are absent from the Applicant's mark.

Although the differences between the parties' marks are fairly numerous, both parties' marks are dominated by 'GREEN' or 'GREEN'S' and, in my view, the apostrophe and the 'S' may be overlooked by the average consumer. I find that, bearing in mind the overall impressions of the marks, the Applicant's mark is similar to the Opponent's marks i) to iv) to a level in the medium range.

46. Comparison against Opponent's marks v) to ix):

The parties' marks share the first five characters 'g', 'r', 'e', 'e', 'n', in that order. Points of difference are:

- the presence of the apostrophe and 's' in the Applicant's mark, which are absent from the Opponent's marks;
- the presence of the embellishment on the 'g' and 'n' of the Opponent's marks, that is absent from the Applicant's mark;
- the presence of the abstract shapes of slightly varied tones in the infill of the characters comprising the Applicant's mark, that are absent from the Opponent's mark;
- the presence of the word element 'lemonade', 'orangeade', 'tonic water', 'lemon lime' or 'sour cherry' in the Opponent's respective marks, that is absent from the Applicant's mark;
- the presence of the 'tendrill' element extending from the left of the Opponent's marks, that is absent from the Applicant's mark;
- the presence of the yellow, orange or red 'trough' and 'droplet' shapes in the Opponent's marks v), iv) and ix), that are absent from the Applicant's mark;
- the presence of the bubbles or spray on the background in the Opponent's marks vii) and viii), that is absent from the Applicant's mark;
- the presence of the black background in the Opponent's marks, that is absent from the Applicant's mark.

Although the differences between the parties' marks are fairly numerous, both parties' marks are dominated by 'GREEN' or 'GREEN'S' and, in my view, the apostrophe and the 'S' may be overlooked by the average consumer. I find that, bearing in mind the overall impressions of the marks, the Applicant's mark is similar to the Opponent's marks v) to ix) to a level in the medium range.

Aural comparison of the marks

47. The Applicant's mark will be articulated as 'GREENS'. The Opponent's marks will be articulated as either 'GREEN' or 'GREEN [whichever word appears beneath this element, e.g. 'MOCKTAILS', 'LEMONADE' etc, as the case may be]'. The first syllable of each mark is highly similar, differing only by virtue of the presence or absence of an 's'. If the 'MOCKTAILS' (or 'LEMONADE' etc) element of the Opponent's mark is articulated, then the marks will, in my view, be aurally similar to a medium degree, whereas if the 'MOK-TAILS' (or 'LEMONADE' etc) element is not articulated, then the marks will be highly aurally similar.

Conceptual comparison of the marks

48. The word 'green' is a dictionary word with which the average consumer will be very familiar. It has several meanings:

- as denoting the colour green;
- as an adjective to describe practices/technologies/ways of living and working that minimise harm to, or benefit, the environment; or
- as an adjective to describe a person who is inexperienced or naïve.

I also consider that a significant proportion of average consumers will see 'Green' as a surname, on the basis that it is a fairly commonplace surname and that the use of surnames in trade marks is common.

The word 'moptails' (or 'mocktails') will, to my mind, be understood by the average consumer as a word for non-alcoholic cocktails. The words 'lemonade', 'orangeade' and 'tonic water' will be understood as the non-alcoholic drinks/mixers to which they refer. 'lemon lime' and 'sour cherry' will, in my view, be understood as flavours of the Opponent's drinks.

I consider that the Opponent's marks might be perceived in one of two ways. A proportion of average consumers might perceive the marks as the badge of a brand of non-alcoholic cocktails which prides itself on minimising its negative impact on, or benefiting, the environment in some way, e.g. by way of its working practices being environmentally sustainable and using 'green' technologies; or by way of a

pledge to plant trees using a portion of its profits, for instance. On the other hand, I consider that another significant proportion of average consumers might perceive the mark as a brand of drinks named after someone with a surname 'Green'.

49. I now consider the Applicant's mark. In my view, the presence of the apostrophe and 's' will likely lead a significant proportion of average consumers to conclude that the 'Green' portion of the mark relates to the surname 'Green' and that the goods and services for which registration is sought are provided by an undertaking named after someone with the surname 'Green'. However, I consider that another significant proportion of average consumers might overlook the presence of the apostrophe and 's' and perceive the Applicant's mark as having similar environmental connotations to those outlined above in relation to the Opponent's marks. I find that for the group of average consumers who see both marks as having environmental connotations, the parties' marks will be highly similar. For the group of average consumers who perceive both parties' marks as the surname 'Green', then the marks will be conceptually identical. It is nevertheless recognised that there may be some average consumers who perceive the Opponent's marks as having environmental connotations e.g. as a 'green' brand, whereas they perceive the Applicant's mark as relating to the surname 'Green' (and vice versa). For this group of average consumers, the parties' marks will be conceptually dissimilar.

Distinctive character of the earlier marks

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

"22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases 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).”

51. Registered trade marks possess varying degrees of inherent distinctive character: perhaps lower where a mark may be suggestive or allusive of a characteristic of the goods, ranging up to those with high inherent distinctive character, such as invented words which have no allusive qualities.
52. For each of the Opponent’s nine marks, the word ‘Green’ dominates and is likely to be the element from which the marks derive their inherent distinctive character. For the group of average consumers who perceive the mark to be the badge of an undertaking which endorses environmentally ethical practices, the word ‘Green’ may be seen as somewhat laudatory. The smaller text elements positioned beneath the word ‘Green’ are, in my view, either descriptive of the type of drink (‘moctails/mocktails’, ‘lemonade’, ‘orangeade’, ‘tonic water’) or the flavour of the drink (‘lemon lime’, ‘sour cherry’). The lime and grapefruit devices (marks i) to iv)) as well as the bubbles/spray overlaying the backgrounds (marks i) to iv) and vii) to viii)). For the group of average consumers for whom the marks have environmental connotations (e.g. ‘green’ technologies, sustainable business practices etc) the marks will, in my view, have a level of inherent distinctive character in the low range.

53. Alternatively, for the group of average consumers who will perceive the marks as referring to the surname 'Green', the 'Green' element will neither describe nor allude to the goods in respect of which the marks are registered. However, I consider the use of surnames as part of trade marks to be not uncommon and fairly unremarkable. I therefore find that, for this group of average consumers, the marks will have no more than a medium level of inherent distinctive character.

54. The Opponent has not filed evidence. I am therefore unable to make a finding in respect of enhanced distinctiveness.

Likelihood of confusion

55. Confusion can be direct or indirect. Mr Iain Purvis Q. C., (as he then was) as the Appointed Person, explained the difference in the decision of *L.A. Sugar Limited v Back Beat Inc*⁷. Direct confusion occurs when one mark is mistaken for another. In *Lloyd Schuhfabrik*⁸, 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 at issue, leads them to conclude that the goods are the responsibility of the same or an economically linked undertaking.

56. 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 [13]. When considering all relevant factors 'in the round', I must bear in mind that a greater degree of similarity between goods *may* be offset by a lesser degree of similarity between the marks, and vice versa.

⁷ Case BL O/375/10 at [16].

⁸ *Lloyd Schuhfabrik Meyer and Co GmbH v Klijsen Handel BV* (C-34297) at [26].

57. In my view, despite the identity and similarity between some of the parties' goods and services, the net effect of the visual differences is sufficient to prevent the average consumer from mistaking one party's mark for the other. Despite both parties' marks containing the element 'green', the average consumer will, in my view, notice many of the visual differences i.e. the fruit devices and other embellishments that I have described. Although I have found the marks to be aurally similar to either a medium or high degree, the purchasing process is predominantly a visual one and the visual differences will therefore play a heightened role. I find this to be the case even where the average consumer pays only an average level of attention during the purchasing process.

58. I now consider whether there is a likelihood of indirect confusion. I note that in the recent case of *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at [16] that "a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion". Arnold LJ agreed, pointing out that there must be a "proper basis" for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

59. In *L.A. Sugar Limited v By Back Beat Inc*⁹ Mr Iain Purvis Q. C., as the Appointed Person, explained that [my words in parentheses]:

"17. Instances where one may expect the average consumer to reach such a conclusion [i.e. to conclude that marks relate to the same or economically linked undertakings] tend to fall into one or more of three categories:

- (a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite

⁹ Case BL O/375/10

distinctive in their own right ('26 RED TESCO' would no doubt be such a case).

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as 'LITE', 'EXPRESS', 'WORLDWIDE', 'MINI' etc.).

(c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension ('FAT FACE' to 'BRAT FACE' for example)".

60. In my view, the instant case likely falls within category (b) identified by Mr Purvis Q.C. I consider that a significant proportion of average consumers may overlook the apostrophe and 's' in the Applicant's mark and presume both parties' marks to contain the element 'Green', perceiving it to be a reference to the surname 'Green'. In this situation, the average consumer will likely presume the parties' marks to derive from the same or economically-related undertakings; for example, the Opponent's marks may be seen as sub-brands relating to the overarching brand 'GREEN'. I find that there is a likelihood of indirect confusion in relation to the parties' goods that I have found to be identical. I have found a number of the Applicant's services to have a low level of similarity with the Opponent's goods. However, I consider that the distance between the parties' goods and services, and the fact that, visually speaking, the parties' marks are not *highly* similar, point away from a likelihood of indirect confusion in respect of those services.

61. The Opponent has argued that the marks upon which it relies constitute a family of marks and that the average consumer would therefore presume the Applicant's mark to originate from the Opponent's undertaking by virtue of being a member of that family of marks.¹⁰ The Opponent has not filed any evidence of the marks being used in the marketplace. I am therefore unable to make a finding in respect of the 'family of marks' argument.

¹⁰ Opponent's written submissions, paragraph [11].

62. I bear in mind the following from the CJEU:¹¹

‘[No] consumer can be expected, in the absence of use of a sufficient number of trade marks capable of constituting a family or series, to detect a common element in such a family or series and/or to associate with that family or series another trade mark containing the same common element. Accordingly, in order for there to be a likelihood that the public may be mistaken as to whether the trade mark applied for belongs to a ‘family’ or ‘series’, the earlier trade marks which are part of that ‘family’ or ‘series’ must be present on the market.’

63. The Opposition has been partially successful and the Applicant has enjoyed the greater degree of success overall. Subject to a successful appeal, the Application:

- Is refused in respect of the class 32 goods;
and
- may proceed to registration in respect of the class 43 services only.

COSTS

64. I award the Applicant the sum of £550 based upon the scale published in Tribunal Practice Notice 1/2023, calculated as follows:

Consideration of the Opposition and preparation of Defence and Counterstatement	£250
Preparation of submissions	£350
Sub-total	£600
Less £50 to account for the partial success of the Opponent	-£50
Total:	£550

65. I therefore order Green Cola LTD to pay to Mark Frank Green the sum of £550.

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 16th day of March 2023

¹¹ Case C-234/06 P *Il Ponte Finanziaria*, [64].

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

Annex

The full specification for Application UK00003684311:

Class 2:	<i>Food dyes [food colorants].</i>
Class 18:	<i>Leather; Leather and imitation leather; Leather twist; Thread (Leather -); Imitation leather; Leather (Imitation -); Leather briefcases; Leather cloth; Leashes (Leather -); Leather suitcases; Leather or leather-board boxes; Leather straps; Stirrup leathers; Leathers (Stirrup -); Leather bags; Boxes of leather or leather board; Leather thread; Synthetic leather; Leather cord; Polyurethane leather; Leather thongs; Leather handbags; Tanned leather; Leads (Leather -); Straps (Leather -); Leather wallets; Unworked leather; Leather and imitations of leather; Laces (Leather -); Leather cords; Leather laces; Leather purses; Leather boxes; Leather leashes; Leather leads; Leather cases; Leather pouches; Leather shoulder straps; Leather luggage tags; Leather key cases; Labels of leather; Leather luggage straps; Leather coin purses; Leather shopping bags; Leather for furniture; Studs of leather; Belts (Leather</i>

	<i>shoulder -); Briefcases [leather goods]; Moleskin [imitation leather]; Pouches of leather; Valves of leather; Leather shoulder belts; Girths of leather.</i>
Class 24:	<i>Textile fabrics; Textile fabric; Rubberized textile fabrics; Waterproof textile fabrics; Reinforced fabrics [textile]; Bedroom textile fabrics; Resin impregnated textile fabrics; Textile fabrics for lingerie; Fabrics for textile use; Non-woven textile fabrics; Fabrics being textile piece goods; Fiberglass fabrics, for textile use; Fibreglass fabrics for textile use; Textile fabrics in the piece; Curtains made of textile fabrics; Fiberglass fabric for textile use; Fiberglass fabrics for textile use; Textiles and substitutes for textiles; Textile fabrics for making up into household textile articles; Textile fabrics for making into blankets; Textile fabrics for use in manufacture; Polypropylene spunbonded non-woven textile fabrics; Textile fabrics for making into linens; Textile fabric of animal skins imitations; Furnishing fabrics being textile piece goods; Textile fabrics for making into clothing; Hand-towels made of textile fabrics; Paper yarn fabrics for textile use; Furnishing and upholstery fabrics; Textile goods, and substitutes for textile goods; Fabrics being textile goods in roll form; Covered rubber yarn fabrics [for textile use]; Markers [labels] of cloth for textile fabrics; Textile fabrics for the manufacture of clothing; Table covers of non-woven textile fabrics; Lining fabrics of textile in the piece; Fabric; Fabrics; Flags and pennants of textile; Fabrics [textile piece goods] made of carbon fibre; Non-woven textile fabrics for use as interlinings; Textiles; Textile fabrics for use in the manufacture of pillowcases; Fabrics being textile piece goods for use in manufacture; Textile fabrics for use in the manufacture of towels; Fabrics being textile piece goods for use in embroidery; Textile fabrics for use in the manufacture of furniture; Textile fabrics for use in the manufacture of beds; Fabrics being textile piece goods for use in tapestry; Textile fabrics for use in the manufacture of sheets; Textile fabrics for use in the manufacture of curtains; Textile fabrics for use in the manufacture of bedding; Fabrics being textile piece goods for use in patchwork;</i>

	<p><i>Textile fabrics for use in the manufacture of sportswear; Zephyr fabric; Embroidery fabric; Jersey [fabric]; Crepe [fabric]; Crepe fabrics; Piled fabrics; Ramie fabrics; Rayon fabric; Muslin fabric; Foulard [fabric]; Fabric valances; Rubberised fabrics; Lining fabrics; Upholstery fabrics; Lingerie fabric; Flax fabrics; Coating fabric; Esparto fabric; Woollen fabrics; Polyester fabric; Fabric cascades; Knitted fabrics; Furnishing fabrics; Linen [fabric]; Curtain fabric; Lingerie fabrics; Hemp fabric; Corduroy fabrics; Woven fabrics; Wall fabrics; Lace fabrics; Moquettes [fabric]; Moleskin [fabric]; Worsted fabrics; Flocked fabrics; Ramie fabric; Nylon fabric; Waterproof fabrics; Waterproof fabric; Flannel [fabric]; Curtain fabrics; Jute fabric; Coated fabrics; Kashmir fabric; Fabric flags; Cotton fabrics.</i></p>
Class 25:	<p><i>Gloves for apparel; Clothing; Clothes; Parts of clothing, footwear and headgear; Clothing for men, women and children; Wristbands [clothing]; Tops [clothing]; Knitted clothing; Oilskins [clothing]; Motorcyclists' clothing; Hoods [clothing]; Leisure clothing; Infant clothing; Children's clothing; Childrens' clothing; Sports clothing; Leather clothing; Gloves [clothing]; Waterproof clothing; Plush clothing; Girls' clothing; Swaddling clothes; Knitwear [clothing]; Cloth bibs; Cyclists' clothing; Playsuits [clothing]; Slipovers [clothing]; Jerseys [clothing]; Weatherproof clothing; Casual clothing; Denims [clothing]; Combinations [clothing]; Furs [clothing]; Shorts [clothing]; Collars [clothing]; Babies' clothing; Ties [clothing]; Outer clothing; Cashmere clothing; Bandeaux [clothing]; Women's clothing; Bodies [clothing]; Embroidered clothing.</i></p>
Class 28:	<p><i>Toy sporting apparatus; Toy bakeware and toy cookware; Sporting articles and equipment; Gymnastic and sporting articles; Toy clocks and watches; Toy bows and arrows; Toy buckets and spades; Toys, games, and playthings; Stuffed and plush toys; Toys and playthings for pets; Toy and novelty face masks; Toy bucket and shovel sets; Toys; Electronic targets for games and sports; Toys and playthings for pet animals; Sports games; Sport hoops; Sports equipment; Sports balls; Sporting articles; Sport balls.</i></p>

Class 32:	<i>Whey beverages; Fruit beverages; Sherbets [beverages]; Sherbet beverages; Sorbets [beverages]; Beverages (Whey -); Waters [beverages]; Isotonic beverages; Soy beverage.</i>
Class 35:	<i>Promotion [advertising] of business; Business advice relating to advertising; Consultations relating to business advertising; Business consultation relating to advertising; Consultancy relating to business advertising; Advertising of business web sites; Business advertising services relating to franchising; Advertising; Advertising services relating to the provision of business; Advertising and advertisement services; Cinema advertising; Advertising agencies; Online advertisements; Newspaper advertising; Television advertising; Advertising analysis; Classified advertising; Elevator advertising; Online advertising; Radio advertising; Banner advertising; Advertising planning; Advertising consultation; Advertising research; Advertising copywriting; Response advertising; Advertising services; Recruitment advertising; Magazine advertising; Outdoor advertising; Business research for new businesses; Business Enquiries; Business advice; Business networking; Business planning; Business acquisitions; Business supervision; Business surveys; Investigations (Business -); Business studies; Business management; Inquiries (Business -); Business expertise; Business appraisal; Business appraisals; Appraisals (Business -); Business auditing; Business consultancy; Information (Business -); Surveys (Business -); Business investigation; Providing advertising space; Creating advertising material; Mediation of advertising; Personnel recruitment advertising; Arrangement of advertising; Advertising of cinemas; Dissemination of advertisements; Advertisement hoarding rental; Business planning and business continuity consulting; Business inquiries; Business organisation; Business information; Business administration; Business analysis; Business assistance; Business promotion; Business investigations; Business research; Research (Business -); Business consulting; Business consultation; Business assistance relating to business image; Advertising business especially in the</i>

	<p><i>field of telematic and telephone networks; Advertising and marketing; Electronic billboard advertising; Cinematographic film advertising; Promotional advertising services; Press advertising services; Providing advertising services; Online advertising services; Direct mail advertising; Mail-order advertising; Direct market advertising; Political advertising services; Rental of advertisement space and advertising material; Press advertising consultancy; Advertisements (Preparing of -); Updating advertising material; Graphic advertising services; Advertising agency services; Publicity and advertising; Taxi top advertising; Preparation of advertisements; Advertising flyer distribution; Advertisements (Placing of -); Advertising and publicity; Compilation of advertisements; On-line advertising; Classified advertising services; Digital advertising services; Advertising research services; Advertising for others; Business management advice relating to manufacturing business; Arranging and conducting of fairs and exhibitions for business and advertising purposes; Business management organisation; Statistical studies (Business -); Business information services; Collecting business information; Preparing business reports; Business management assistance; Assistance (Business management -); Business examinations services; Business profit analysis; Business appraisal consultancy; Consultancy (Professional business -); Professional business consultancy; Interim business management; Business advisory services relating to business liquidations; Consultancy regarding business organisation and business economics; Business advisory services; Business acquisitions consultation; Shows (Conducting business -); Business accounts management; Business relocation services; Business planning services; Business administration consultancy; Computerised business research.</i></p>
Class 37:	<p><i>Warehouse construction and repair; Building construction and repair; Underwater construction, installation and repair; Repairing construction works; Repair of construction machines and equipment; Repair or maintenance of construction machines and apparatus;</i></p>

Winching of machines related to installation, repair and construction; Pipeline construction and maintenance; Underwater building and construction; Building, construction and demolition; Building and construction services; Telephone installation and repair; Building maintenance and repair; Furniture maintenance and repair; Tyre maintenance and repair; Airplane maintenance and repair; Vehicles maintenance and repair; Automobile repair and maintenance; Fur care and repair; Building repair and renovation; Clock and watch repair; Leather cleaning and repair; Furnace installation and repairs; Lift installation and repair; Antenna installation and repair; Safe maintenance and repair; Vehicle maintenance and repair; Vehicle repair and maintenance; Pump repair and maintenance; Burner maintenance and repair; Pipeline installation and repair; Boiler cleaning and repair; Aeroplane maintenance and repair; Providing information relating to the construction, repair and maintenance of buildings; Watch repair (Clock and -); Book repair and restoration; Furnace installation and repair; Elevator installation and repair; Computer installation and repair; Aircraft maintenance and repair; Aircraft repair and maintenance; Residential and commercial building construction; Construction of conservatories and greenhouses; Construction; Building construction and demolition services; Winching of buildings and constructions; Constructing [erecting and glazing] conservatories; Laying and construction of pipelines; Renovation and repair of buildings; Maintenance and repair of buildings; Maintenance and repair of telephones; Irrigation devices installation and repair; Burglar alarm installation and repair; Maintenance and repair of motors; Oil burner servicing and repair; Plumbing installation, maintenance and repair; Maintenance and repair of furniture; Repair and maintenance of aircraft; Repair and maintenance of airplanes; Strong-room maintenance and repair; Maintenance and repair of gears; Repair and maintenance of spectacles; Maintenance and repair of footwear; Maintenance and repair of motorcycles; Maintenance and repair of yachts;

Maintenance and repair of compressors; Repair and maintenance of smartphones; Maintenance and repair of drones; Maintenance and repair of pipelines; Maintenance and repair of clothing; Window blind installation and repair; Oil burner regulation and repair; Maintenance and repair of flooring; Maintenance and repair of aircraft; Maintenance and repair of aeroplanes; Maintenance and repair of vehicles; Maintenance and repair of automobiles; Repair and maintenance of automobiles; Maintenance and repair of ships; Lift and elevator installation, maintenance and repair; Rental of construction machines and apparatus; Signs (Painting and repair of -); Electric appliance installation and repair; Fire alarm installation and repair; Machinery installation, maintenance and repair; Maintenance and repair of heating; Care and repair of skis; Maintenance and repair of burners; Vehicle tyre fitting and repair; Venetian blind installation and repair; Freezing equipment installation and repair; Maintenance and repair of watches; Film projector repair and maintenance; Vehicle upholstery and repair services; Maintenance and repair of airplanes; Repair and maintenance of aeroplanes; Leather care, cleaning and repair; Fur care, cleaning and repair; Fur cleaning, care and repair; Heating equipment installation and repair; Maintenance and repair of hardware; Repair and maintenance of vehicles; Motor vehicle maintenance and repair; Maintenance and repair of cranes; Clock and watch repair services; Maintenance and repair of spacecraft; Satellite dish installation and repair; Maintenance and repair of lifts; Maintenance and repair of engines; Aircraft maintenance and repair services; Maintenance and repair of strongrooms; Maintenance and repair of safes; Maintenance and repair of computers; Repair and restoration of furniture; Maintenance and repair of toys; Maintenance and repair of upholstery; Maintenance and repair of bicycles; Furniture restoration, repair and maintenance; Maintenance and repair of gates; Factory construction; Scenery construction; Insulation construction; Offshore construction; Providing information relating to the repair or maintenance of

	<p><i>construction machines and apparatus; Construction of buildings and other structures; Construction of manufacturing and industrial buildings; Constructing [erecting and glazing] garden buildings; Rental of construction and building equipment; Construction and erection of exhibition stands, stages and booths; Underground construction; Constructing decks; Pier construction; Marine construction; Construction services; Information (Construction -); Industrial construction; Maintenance and repair of axles and parts thereof; Maintenance and repair of horological and chronometric instruments.</i></p>
<p>Class 41:</p>	<p><i>Education, entertainment and sports; Education, entertainment and sport services; Summer camps [entertainment and education]; Entertainment, education and instruction services; Play schemes [entertainment/education]; Organisation of competitions [education and/or entertainment]; Club services [entertainment or education]; Kindergarten services [education or entertainment]; Arranging and conducting of competitions [education or entertainment]; Education and training in the field of music and entertainment; Organisation of competitions [education or entertainment]; Competitions (Organization of -) [education or entertainment]; Education and training; Education and instruction; Organization of competitions [education or entertainment]; Organisation of competitions (education or entertainment); Competitions (organisation of -) [education or entertainment]; Ticket reservation and booking services for education, entertainment and sports activities and events; Organization of competitions for education or entertainment; Television and radio entertainment; Radio and television entertainment; Educational and training services; Education and training consultancy; Organisation of competitions for education or entertainment; Arranging of competitions for education or entertainment; Rental services relating to equipment and facilities for education, entertainment, sports and culture; Education and training services; Education and instruction services; Training and education</i></p>

services; Education, teaching and training; Educational and teaching services; Entertainment; Entertainment, sporting and cultural activities; Radio and television entertainment services; Television and radio entertainment services; Provision of education and training; Education; Cultural, educational or entertainment services provided by art galleries; Arranging and conducting educational conferences; Vocational education and training services; Provision of training and education; Linguistic education and training services; Arranging and conducting education fairs; Information about entertainment and entertainment events provided via online networks and the Internet; Planning and conducting of parties [entertainment]; Sound recording and video entertainment services; Television entertainment; Cinema entertainment; Radio entertainment; Arranging of visual and musical entertainment; Arranging and conducting of entertainment events; Arranging and conducting of entertainment activities; Entertainment services; Musical entertainment; Organisation of entertainment and cultural events; Entertainer services; Theatre entertainment; Production and rental of educational and instructional materials; Interactive entertainment; Live entertainment; Entertainment information; Information (Entertainment -); Educational research; Educational demonstrations; Educational testing; Educational examination; Further education; Providing educational entertainment services for children in after-school centers; Career counselling [training and education advice]; Arranging and conducting of educational seminars; Publication of educational and training guides; Development of educational courses and examinations; Provision of educational examinations and tests; Arranging and conducting of educational courses; Arranging and conducting of educational events; Preparation of educational courses and examinations; Academies [education]; Education examination; Vocational education; Information (Education -); Lingual education; Health education; Educational instruction; Educational consultancy; Physical education; Information and advisory services relating to

	<p><i>entertainment; Singing education; Educational seminars; Religious education; Education (Religious -); Education services; Educational services; Education information; Educational information; Organizing and arranging exhibitions for entertainment purposes; Entertainment services by stage production and cabaret; Arranging and conducting of live entertainment events; Provision of radio and television entertainment services; Career information and advisory services (educational and training advice); Educational and instruction services relating to sport; Educational and training services relating to healthcare; Educational and instruction services relating to arts and crafts; Provision of educational entertainment services for children in after school centers; Radio entertainment production; Tv entertainment services; Entertainment agency services; Hospitality services (entertainment); Online interactive entertainment; Popular entertainment services; Entertainment by film; Provision of educational health and fitness information; Career counselling relating to education and training; Providing computer-delivered educational testing and assessments; Educational and training services relating to sport; Provision of entertainment; Audio entertainment services; Entertainment booking services; Booking of entertainment; Hypnotist shows [entertainment]; Planning (Party -) [entertainment]; Entertainment party planning; Entertainment club services; Video entertainment services; Cinematographic entertainment services; Music entertainment services; Production of educational sound and video recordings; Online entertainment services; Interactive entertainment services; Party planning [entertainment]; Corporate hospitality (entertainment); Club entertainment services; Club services [entertainment]; Sports entertainment services; Children's entertainment services; Entertainment information services.</i></p>
Class 43:	<p><i>Food preparation services; Hotel restaurant services; Restaurant services provided by hotels; Bar and restaurant services; Restaurant services; Restaurant and bar services; Hotel services; Providing hotel</i></p>

and motel services; Udon and soba restaurant services; Restaurant information services; Ramen restaurant services; Hotels and motels; Carvery restaurant services; Providing restaurant services; Self-service restaurants; Self-service restaurant services; Restaurant reservation services; Washoku restaurant services; Mobile restaurant services; Japanese restaurant services; Spanish restaurant services; Tempura restaurant services; Hotel accommodation services; Hotel catering services; Resort hotel services; Restaurants (Self-service -); Sushi restaurant services; Pet hotel services; Hotel reservation services; Reservation and booking services for restaurants and meals; Restaurants; Take-out restaurant services; Fast-food restaurant services; Hotels; Hotel room booking services; Salad bars [restaurant services]; Hotel accommodation reservation services; Providing room reservation and hotel reservation services; Booking services for hotels; Grill restaurants; Providing information about restaurant services; Hotel services for preferred customers; Resort hotels; Hotel information; Hotel reservations; Delicatessens [restaurants]; Tourist restaurants; Providing reviews of restaurants and bars; Restaurant services incorporating licensed bar facilities; Reservation of restaurants; Fast food restaurants; Providing accommodation in hotels and motels; Serving food and drink in restaurants and bars; Making reservations and bookings for restaurants and meals; Providing food and drink in restaurants and bars; Accommodation bureau services [hotels, boarding houses]; Electronic information services relating to hotels; Agency services for booking hotel accommodation; Consultancy services relating to hotel facilities; Agency services for reservation of restaurants; Travel agency services for booking restaurants; Booking agency services for hotel accommodation; Provision of food and drink in restaurants; Providing hotel accommodation; Carry-out restaurants; Hotels, hostels and boarding houses, holiday and tourist accommodation; Arranging hotel accommodation; Travel agency services for making hotel reservations; Travel agency services for reserving hotel

	<p><i>accommodation; Hotel reservation services provided via the Internet; Serving food and drink for guests in restaurants; Providing food and drink for guests in restaurants; Provision of hotel accommodation; Information relating to hotels; Reservation of hotel accommodation; Providing reviews of restaurants; Appraisal of hotel accommodation; Booking of restaurant seats; Booking of hotel accommodation; Restaurant services for the provision of fast food; Arranging of hotel accommodation; Providing exhibition facilities in hotels; Rental of curtains for hotels; Arranging of meals in hotels; Making hotel reservations for others; Reservation of accommodation in hotels; Rental of furniture for hotels; Accommodation bureaux [hotels, boarding houses]; Rental of towels for hotels; Provision of information relating to restaurants; Provision of information relating to hotels; Booking of hotel rooms for travellers; Rental of floor coverings for hotels; Rental of wall hangings for hotels; Providing hotel information via a website ; Bed and breakfast services.</i></p>
Class 44:	<p><i>Beauty treatment; Salons (Beauty -); Beauty consultancy; Beauty consultation; Beauty counselling; Beauty care; Beauty salons; Beauty salon services; Beauty consultancy services; Beauty information services; Beauty therapy treatments; Beauty care services; Beauty consultation services; Beauty therapy services; Beauty treatment services; Salon services (Beauty -); Beauty advisory services; Beauty spa services; Beauty care for animals; Hygienic and beauty care; Providing information about beauty; Facial beauty treatment services; Beauty care of feet; Pet beauty salon services; Information relating to beauty; Consultancy services relating to beauty; Hygienic and beauty care services; Beauty salons for wig cutting ; Human hygiene and beauty care; Advisory services relating to beauty; Beauty care for human beings; Information relating to beauty care; Advisory services relating to beauty treatment; Advisory services relating to beauty care; Hygienic and beauty care for animals; Consultation services relating to beauty care; Beauty treatment services especially for eyelashes; Hygienic and beauty care for humans; Services of a hair</i></p>

<p><i>and beauty salon; Provision of hygienic and beauty care services; Hygienic and beauty care for human beings; Providing information relating to beauty salon services; Medical tele-reporting [medical services]; Medical testing; Medical counseling; Nursing, medical; Medical clinics; Medical screening; Medical services; Medical nursing; Medical examinations.</i></p>
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