

O/0526/24

TRADE MARKS ACT 1994

IN THE MATTER OF INTERNATIONAL REGISTRATION NO. WO0000001664272

DESIGNATING THE UK

IN THE NAME OF KERSTIN REINWALD

FOR THE TRADE MARK:

MAP

IN CLASS 5

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 437829

BY INTERNATIONAL NUTRITION RESEARCHER CENTER, INC

BACKGROUND AND PLEADINGS

1. International registration no. 1664272 (“the IR”) consists of the trade mark shown on the cover page of this decision. The holder is Kerstin Reinwald (“the applicant”). The IR is registered with effect from 21 March 2022. With effect from the same date, the applicant designated the UK as a territory in which it seeks to protect the IR under the terms of the Protocol to the Madrid Agreement. The applicant seeks protection for the following goods:

Class 5: *Dietary supplements and dietetic preparations; dietary supplements for human beings and animals; food supplements consisting of amino acids.*

2. On 02 December 2022, International Nutrition Researcher Center, Inc (“the opponent”) opposed the protection of the IR in the UK based upon Sections 5(4)(a), 3(6) and 5(6) of the Trade Marks Act 1994 (“the Act”).

3. Under Section 5(4)(a), the opponent claims to have used the sign ‘MAP’ throughout the UK since 2014 in relation to *“nutritional and dietary supplements and preparations, including nutritional and dietary supplements being amino acid formulations and nutritional protein”*. The opponent claims that use of the IR would be contrary to the law of passing off.

4. Under Sections 3(6) and 5(6) the opponent’s claims to be the owner of extensive unregistered rights in the trade mark ‘MAP’, as well as the registered proprietor of several registrations for the trade mark ‘MAP’, including US Registration no. 2517779 ‘MAP MASTER AMINO ACID PATTERN’ in class 5 (filed in 1998) and Swiss Registration no. 707804 ‘MAP’ in classes 5, 29 and 30 (filed in 2017). The opponent further claims that the applicant via *“a close contact and associated business interest”* previously had a business relationship with the opponent as a distributor of the opponent’s ‘MAP’ products, including an arrangement for the distribution of the opponent’s products in Germany. The opponent subsequently became aware of the unauthorised filing of various trade mark applications in the name of a close contact of the applicant for the trade marks ‘MAP’ and ‘MAP Master Amino Profile’ in the EU and beyond; this ultimately led to legal proceedings being filed in Germany by the

opponent against the registration of the mark 'MAP' by a close contact of the applicant. The German court held that the German trade mark registration was filed in bad faith and should be assigned to the opponent. The applicant for the German trade mark application did not comply with the Court order to assign the registration in question and, instead, surrendered the registration.

5. In a nutshell, the opponent's case is that in view of the wider relationship between the parties and the finding by the German Court that the German trade mark 'MAP' was filed in bad faith, when the applicant applied to register the IR it must have been aware that the opponent was the owner of trade mark rights in the mark 'MAP', and that filing further trade mark applications outside Germany would also constitute filing in bad faith. Finally, the opponent claims that the filing of the IR in the name of the applicant rather than her close contact (and associated business) is a further indication of the applicant's bad faith intention as it was designed to circumvent some of the legal remedies available to the opponent against the applicant for the mark 'MAP' in Germany. Thus, the opponent asserts that the request for protection of the IR in the UK should be refused based on the fact that, when the applicant applied to register the IR, she acted in bad faith in violation of Section 3(6), and as an unauthorised agent without the opponent's consent in violation of Section 5(6).

6. The applicant filed a counterstatement denying the claims made. In particular, the applicant stated that:

- The opponent's claim that it is the owner of trade mark registrations outside of the UK is irrelevant to the question of bad faith in relation to an application for protection of a IR in the UK. In addition, the opponent's trade mark registrations are all invalid for lack of distinctive character. The opponent owned UK trade mark registrations nos. 906754782 for 'MASTER AMINO ACID PATTERN MAP' and 900960633 for 'MAP MASTER AMINO ACID PATTERN' but these registrations have been cancelled following a decision of the EUIPO in which it was held that the corresponding EU registrations nos. 6754782 and 960633 are devoid of distinctive character. This is why these two UK registrations are not being relied upon in this opposition;

- The applicant denies that the opponent has unregistered rights in the sign 'MAP' in the UK;
- The applicant denies that as a matter of legal principle, any party can have acted in bad faith due to the previous actions and business relationships of another party. The applicant cannot be held to be vicariously liable for the actions of others;
- The opponent has not identified the alleged "*close contact and associated business interest*" in question. Without identifying this party, the opponent has not set out the bad faith ground of opposition properly, and the applicant cannot respond. The opponent is therefore put to strict proof of its claim, and in particular, to fully explain the alleged previous business relationship as a distributor or agent, why it relates to the applicant in particular, and how it relates to the UK in particular. Even if the opponent manages to satisfy these requirements, it must still set out how the applicant has acted dishonestly, because the mere existence of a previous commercial relationship does not lead to an automatic finding of bad faith;
- Trade mark applications filed by someone other than the applicant are not relevant to these proceedings. Likewise, legal proceedings filed in Germany against someone other than the applicant are not relevant to this opposition. Finally, the decisions of a German national court are not binding upon the UK IPO, and the particular facts of those cases may be entirely different to those pertaining to the present application. In particular, if the other unidentified party was found to have been a distributor for the opponent in Germany, then the situation would be very different;
- The applicant denies that when she applied to register the IR she was aware of the opponent's alleged use of the trade mark 'MAP' and put the opponent to strict proof of its claim;
- The opponent's claim that the applicant acted in bad faith relies on the idea that had the other party filed the application, then it would have been in bad faith, but this was avoided because the applicant filed it instead. If so, the opponent

is essentially arguing that the application was not filed in bad faith for the reasons it gave. The opponent is put to strict proof of its allegations and arguments, and in particular, of the claim that the applicant deliberately stood in for another party. Evidence of a mere relationship between two such parties does not constitute such evidence;

- The applicant denies that there has been a previous commercial relationship between the opponent and the applicant in the UK in relation to the use of the trade mark 'MAP'. It is the applicant's position that there has never been such a relationship, and that she was not aware of the opponent's alleged use of the trade mark 'MAP' in the UK;
- Section 5(6) only applies to agents or representatives for UK trade marks and does not apply to situations where an applicant was previously an agent or representative for a trade mark in a different jurisdiction. The applicant has never been an agent or representative for the opponent in the UK or anywhere else. The opponent's argument that its relationship was with another party is self-defeating. The applicant put the opponent to proof that the applicant herself was an agent or representative for the opponent in the UK.

7. The opponent is represented by Marks & Clerks LLP. The applicant is represented by Baron Warren Redfern.

8. The opponent filed evidence-in-chief in the form of the witness statement of Prof Dr Maurizio Lucà dated 15 June 2023 with 10 exhibits thereto. Prof Lucà has been a President of the opponent since 1995. The applicant filed no evidence; however, she filed written submission dated 29 August 2023 during the evidence rounds. Neither party requested a hearing, and only the opponent filed written submissions in lieu. This decision is taken following a careful consideration of the papers.

Relevance of EU Law

9. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the

European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

Section 5(4)(a)

10. Section 5(4)(a) of the Act states as follows:

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

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

(b) [...]

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”.

11. Subsection (4A) of Section 5 states:

“(4A) The condition mentioned in subsection (4)(a) is that the rights to the unregistered trade mark or other sign were acquired prior to the date of application for registration of the trade mark or date of the priority claimed for that application.”

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

“55. The elements necessary to reach a finding of passing off are the ‘classical trinity’ of that tort as described by Lord Oliver in the *Jif Lemon* case (Reckitt &

Colman Product v Borden [1990] 1 WLR 491 HL, [1990] RPC 341, HL), namely goodwill or reputation; misrepresentation leading to deception or a likelihood of deception; and damage resulting from the misrepresentation. The burden is on the Claimants to satisfy me of all three limbs.

56. In relation to deception, the court must assess whether "*a substantial number*" of the Claimants' customers or potential customers are deceived, but it is not necessary to show that all or even most of them are deceived (per *Interflora Inc v Marks and Spencer Plc* [2012] EWCA Civ 1501, [2013] FSR 21)."

Relevant date

13. Since the applicant has not filed any evidence of use that could establish an earlier relevant date, the relevant date in this case is 21 March 2022.¹

Goodwill

14. In *Inland Revenue Commissioners v Muller & Co's Margarine Ltd* [1901] AC 217 (HOL), goodwill was described in the following terms:

"What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start."

15. The opponent's evidence about goodwill is very brief and refers only to a product called 'MAP Master Amino Acid Pattern', which, Prof Lucà states, is a unique amino acid formula and the opponent's most successful and well-known product. According to Prof Lucà, since 1992, the results of numerous scientific clinical studies, performed in human subjects, have shown that "MAP Master Amino Acid Pattern" can substitute

¹ *Advanced Perimeter Systems Limited v Multisys Computers Limited*, BL-O-410/11

dietary proteins in a safer and nutritionally more effective way. Prof Lucà also states that as a result of the success of the opponent's 'MAP' product, the opponent has sought to protect its interests in the trade mark 'MAP', and provides evidence of trade mark registrations in the opponent's name for 'MAP MASTER AMINO ACID PATTERN' and 'PROF. LUCA' -MORETTI MAP' (or slight variations of these marks) in the EU, US and Canada.² The earliest registration appears to be a US registration from 1998.

16. Prof Lucà also exhibits copies of the opponent's website at www.masteraminoacidpattern.com.³ The copies are undated save for the first page which displays a printing date of 13 July 2021. The mark 'MAP' appears to be used in the following form:



FAQs 1-3 on the www.masteraminoacidpattern.com website explain that (1) 'MAP' is a dietary protein substitute that contains the 'MAP Master Amino Acid Pattern', a unique pattern of essential amino acids which has obtained a US patent (no. 5,132,113), (2) the discovery of 'MAP' is the result of 23 years of research by the opponent, a leading research institution in the field of human nutrition and (3) 'MAP' is a dietary supplement which complies with the US FDA (Food and Drug Administration)'s labelling regulations and does not require FDA's approval.

17. Before proceeding any further, I do, however, need to emphasise that the first hurdle for the opponent is to establish that it had an actionable goodwill in the UK in a business associated with the sign 'MAP' at the relevant date. To be actionable, the goodwill must be more than trivial.⁴

18. The fact that the opponent is the owner of registered trade marks incorporating the sign 'MAP' outside the UK does not establish, on its own, goodwill in a business with

² Exhibit 2

³ Exhibit 1

⁴ *Hart v Relentless Records* [2002] EWHC 1984 (Ch)

sales to UK customers. The only evidence of UK sales is that contained in Exhibit 3 which introduces sample invoices. Of the invoices exhibited, some relate to 'MAP'-branded goods sold by the opponent to consumers in EU countries other than the UK. Clearly, these sales do not assist the opponent in establishing the existence of a protectable goodwill in the UK. The exhibit also includes the following invoices which relate to goods sold either to the UK or from the UK:

- Four invoices dated on various dates in January 2018 and issued by INRC Europe Ltd. This company, Prof Lucà explains, is a UK company which was incorporated in 2013 by himself and his wife, in order to sell, as exclusive distributor, the opponent's products within the EU, including the UK. All but one of the invoices relate to the sale of a product identified as 'MAP Master Amino Acid Pattern' supplied in the form of a bottle with 120 capsules.

The first invoice is dated 8 January 2018 and evidences the sale of 6 bottles of 'MAP Master Amino Acid Pattern' for a total of €234; this includes the cost of the goods plus the cost of VAT and shipping, both of which appear to relate to Italy, as shown below:

Description	Quantity	Price	Amount
MAP Master Amino Acid Pattern® MAP bottle with 120 tablets each	6	€33.62	€201.72
		Subtotal	€201.72
		Delivery	€10.25
		VAT ITA shipping (22%)	€2.26
		VAT Italy (10%)	€20.17
		Total	€234.40 EUR

Prof Lucà does not explain the relevance of these invoices in showing sales and goodwill in the UK. However, given that the total is shown in euros (rather than pound sterling) and that the goods appear to have been subject to Italian VAT and to have been shipped from Italy to a customer in Germany, it is likely that the role of the UK company INRC Europe Ltd was limited to taking the orders, arranging the shipment of the said goods after the date of sale, and issuing the invoices.

The second invoice is dated 25 January 2018 and evidences the sale of 6 bottles of 'MAP Master Amino Acid Pattern' for a total of €231.89; this includes the cost of the goods plus the cost of VAT and shipping, both of which appear, again, to relate to Italy. The consumer, in this case, has an Italian address.

The third invoice is dated 12 January 2018 and evidences the sale of 12 bottles of 'MAP Master Amino Acid Pattern' for a total of €369.83; this includes the cost of the goods plus the cost of VAT and shipping, both of which appear, again, to relate to Italy. Also in this case, the consumer has an Italian address.

The fourth invoice is dated 30 January 2018 but appears to relate to goods sold under a different brand, namely 'SON Formula', so is not relevant because it does not show use of the sign relied upon.⁵

- Eight invoices for goods described as 'MAP bottles of 120 tablets each' all sold to the opponent's EU distributor INRC Europe Ltd. One of the invoices, dated December 2014, is issued by the opponent itself. The remaining seven invoices, dated December 2015, December 2016, December 2017, December 2018, December 2019, December 2020 and November 2022, are all issued by a company called MAP America Inc. The invoices are for the following values: 224,941.00 USD; 358,400.00 USD; 330,775.00 USD; 333,944.00 USD; 399,906.00 USD; 559,128.78 USD; 763,695.00 USD; 777,366.00 USD for a total of approximately 3.7 million USD. However, as the applicant correctly pointed out in its written submissions, these appear to be internal sales⁶ (or at least sales to a distributor of the opponent), which do not count for very much in establishing sales to UK consumers (and goodwill in the UK). In this connection, it is also important to note that although Prof Lucà gave evidence that INRC Europe Ltd is a UK company which was set up to sell the opponent's products in the EU, including the UK (the opponent being an American company), there is nothing indicating what proportion, if any, of the 3.7 million

⁵ Evidence at Exhibit 5 page 19 suggested that goods carrying the mark SON Formula also carry the mark MAP but there is no evidence that the marks are always used together.

⁶ INRC Europe Ltd is confirmed as a distributor of the opponent. Although there is no explanation about the relationship between MAP America Inc and the opponent, the fact that MAP America Inc is an American company incorporating the opponent's brand and selling the opponent's MAP branded goods to the opponent's UK distributor suggests that these companies are related.

USD relate to goods subsequently sold by INRC Europe Ltd to UK consumers (as opposed to customers in the EU). In this connection, I note that none of the invoices evidencing sales to INRC Europe Ltd indicates where the goods were eventually shipped, as shown below:

Date: November 22, 2022	INVOICE No.: 1100EU-2022
SOLD TO: INRC Europe Ltd. 54 Portland Place	SHIPPED TO:

19. Finally, the opponent produces evidence showing that INRC Europe Ltd sells its products in the UK via third party retailers such as Amazon.⁷ The webpages exhibited are undated, and do not assist the opponent because they do not demonstrate sales to UK consumers prior to the relevant date. Whilst there are also a number of customer reviews, they are mostly undated; only a handful of the reviews which are dated were posted prior to the relevant date, however, they give no detail about whom purchased the goods. In any event, even if I was satisfied that this evidence establishes that a few sales occurred prior to the relevant date, that would be far from establishing the existence of a more than trivial goodwill.

20. Taking into account all of the above, in particular (a) the fact that none of the invoices show sales to UK consumers and (b) the absence of any information about the turnover generated by the sale of 'MAP'-branded goods in the UK, my conclusion is that the opponent has not established a protectable goodwill in the UK sufficient to sustain its claim for passing off.

21. The opposition based on Section 5(4)(a) fails at the first hurdle.

Section 3(6)

22. Section 3(6) of the Act states:

⁷ Exhibit 10

“(6) A trade mark shall not be registered if or to the extent that the application is made in bad faith.”

23. In *Sky Limited & Ors v Skykick, UK Ltd & Ors*, [2021] EWCA Civ 1121 the Court of Appeal considered the case law from *Chocoladefabriken Lindt & Sprüngli AG v Franz Hauswirth GmbH*, Case C-529/07 EU:C:2009:361, *Malaysia Dairy Industries Pte. Ltd v Ankenævnetfor Patenter Varemærker* Case C-320/12, EU:C:2013:435, *Koton Mağazacılık Tekstil Sanayi ve Ticaret AŞ*, Case C-104/18 P, EU:C:2019:724, *Hasbro, Inc. v EUIPO, Kreativni Dogaaji d.o.o. intervening*, Case T-663/19, EU:2021:211, *pelicantravel.com s.r.o. v OHIM, Pelikan Vertriebsgesellschaft mbH & Co KG (intervening)*, Case T-136/11, EU:T:2012:689, and *Psytech International Ltd v OHIM, Institute for Personality & Ability Testing, Inc (intervening)*, Case T-507/08, EU:T:2011:46. It summarised the law as follows:

“68. The following points of relevance to this case can be gleaned from these CJEU authorities:

1. The allegation that a trade mark has been applied for in bad faith is one of the absolute grounds for invalidity of an EU trade mark which can be relied on before the EUIPO or by means of a counterclaim in infringement proceedings: *Lindt* at [34].

2. Bad faith is an autonomous concept of EU trade mark law which must be given a uniform interpretation in the EU: *Malaysia Dairy Industries* at [29].

3. The concept of bad faith presupposes the existence of a dishonest state of mind or intention, but dishonesty is to be understood in the context of trade mark law, i.e. the course of trade and having regard to the objectives of the law namely the establishment and functioning of the internal market, contributing to the system of undistorted competition in the Union, in which each undertaking must, in order to attract and retain customers by the quality of its goods or services, be able to have registered as trade marks signs which enable the consumer, without any possibility of confusion, to distinguish those goods or

services from others which have a different origin: *Lindt* at [45]; *Koton Mağazacılık* at [45].

4. The concept of bad faith, so understood, relates to a subjective motivation on the part of the trade mark applicant, namely a dishonest intention or other sinister motive. It involves conduct which departs from accepted standards of ethical behaviour or honest commercial and business practices: *Hasbro* at [41].

5. The date for assessment of bad faith is the time of filing the application: *Lindt* at [35].

6. It is for the party alleging bad faith to prove it: good faith is presumed until the contrary is proved: *Pelikan* at [21] and [40].

7. Where the court or tribunal finds that the objective circumstances of a particular case raise a rebuttable presumption of lack of good faith, it is for the applicant to provide a plausible explanation of the objectives and commercial logic pursued by the application: *Hasbro* at [42].

8. Whether the applicant was acting in bad faith must be the subject of an overall assessment, taking into account all the factors relevant to the particular case: *Lindt* at [37].

9. For that purpose it is necessary to examine the applicant's intention at the time the mark was filed, which is a subjective factor which must be determined by reference to the objective circumstances of the particular case: *Lindt* at [41] – [42].

10. Even where there exist objective indicia pointing towards bad faith, however, it cannot be excluded that the applicant's objective was in pursuit of a legitimate objective, such as excluding copyists: *Lindt* at [49].

11. Bad faith can be established even in cases where no third party is specifically targeted, if the applicant's intention was to obtain the mark for

purposes other than those falling within the functions of a trade mark: *Koton Mağazacılık* at [46].

12. It is relevant to consider the extent of the reputation enjoyed by the sign at the time when the application was filed: the extent of that reputation may justify the applicant's interest in seeking wider legal protection for its sign: *Lindt* at [51] to [52].

13. Bad faith cannot be established solely on the basis of the size of the list of goods and services in the application for registration: *Psytech* at [88], *Pelikan* at [54].”

24. According to *Alexander Trade Mark*, BL O/036/18, the key questions for determination in a claim of bad faith are:

(a) What, in concrete terms, was the objective that the applicant has been accused of pursuing?

(b) Was that an objective for the purposes of which the contested application could not be properly filed? and

(c) Was it established that the contested application was filed in pursuit of that objective?

25. It is necessary to ascertain what the applicant knew at the relevant date: *Red Bull GmbH v Sun Mark Limited and Sea Air & Land Forwarding Limited* [2012] EWHC 1929 (Ch). Evidence about subsequent events may be relevant, if it casts light backwards on the position at the relevant date: *Hotel Cipriani SRL and others v Cipriani (Grosvenor Street) Limited* and others, [2009] RPC 9 (approved by the Court of Appeal in England and Wales: [2010] RPC 16).

The evidence of bad faith

26. The opponent's pleadings relative to the plea of bad faith claim are set out above. Essentially, the opponent claims that the applicant had prior knowledge of the opponent's mark 'MAP' due to her close relationship with a third party who was a distributor of the opponent's goods in Germany and was found, by the German court, to have registered the mark 'MAP' in bad faith. The opponent also claims that the contested IR was filed in the name of the applicant in a dishonest way in order to circumvent the previous finding of bad faith against the third party and that the applicant was merely fronting for the third party.

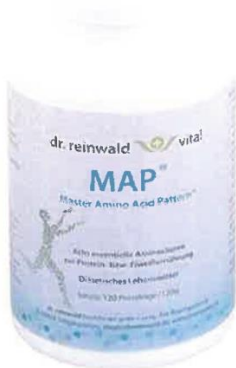
27. The opponent's evidence clarifies that the third party closely connected with the applicant is Dr Heinz Reinwald, the applicant's husband. As to how Dr Heinz Reinwald was involved in the opponent's business, Prof Lucà gave evidence that in 1999-2000, Dr Reinwald was working as a distributor for Generation of Health ("GOH"), a Swedish company which was a non-exclusive EU distributor of the opponent's dietary supplements sold under the trade marks 'MAP Master Amino Acid Pattern' and 'MAP'. Due to this business relationship, GOH and the opponent arranged seminars to be held in the EU with a view of promoting the sale of the opponent's 'MAP' products by GOH. Prof Lucà says that Dr Reinwald was introduced to him at one of these seminars and that in the following years, Dr Reinwald became, on behalf of GOH, his personal English translator and also his "chauffer" during the seminars.

28. According to Prof Lucà, when GOH was dissolved in 2009, Dr Reinwald became a non-exclusive wholesale distributor of 'MAP Master Amino Acid Pattern' products covering mostly Germany, and the opponent accepted Dr Reinwald's request to include his company name, i.e. 'dr. reinwald + vital', into the opponent's 'MAP Master amino acid Pattern' label. This claim is supported by copies of webpages (undated) from the Amazon Germany website and another German website (www.voltreffersport.de) showing the wording "'dr. reinwald + vital' on the bottle of a product identified as 'MAP Master Amino Acid Pattern', as shown below:⁸

⁸ Exhibit 4



395 · Nahrungsergänzung · Sportnahrung



Einzelbild Ansicht: Maue über das Bild ziehen

MAP® Master Amino Acid Pattern (Das Original von Prof. Dr. Luca Moretti 1 Packung á 120 Presslinge (10+1 Dosen, 1.320 Gramm)

von Dr. Reinwald

Geben Sie die erste Bewertung für diesen Artikel ab

Preis: **EUR 539,00 GRATIS Lieferung innerhalb Deutschlands.**
Alle Preisangaben inkl. MwSt.

Auf Lager.

Lieferung 4. - 8. Nov. wenn Sie **Standardversand** an der Kasse auswählen. [Siehe Details.](#)

Verkauf und Versand durch [Apran-onlinestore](#). Für weitere Informationen, Impressum, AGB und Widerrufsrecht klicken Sie bitte auf den Verkäufernamen.

- Alle 8 essentiellen Aminosäuren, frei und kristallin
- MAP® hat eine Bioverfügbarkeit/Verdaulichkeit von 100%
- Für Vegetarier/ Veganer, Sportler, für Menschen, die eine Diät einhalten oder ihre Eiweißbilanz optimieren möchten
- Als Ersatz bei Unverträglichkeit von Nahrungseiweiß - 100 % rein & freikristallin
- Gentechnikfrei und frei von jeglichen Zusatzstoffen

29. These claims are also supported by copies of invoices showing sales by the opponent to Dr Reinwald of goods described as 'MAP bottles 120 tablets each', the goods being labeled, unlabeled, German labeled or Swiss labelled. A number of invoices show that the goods were sold directly to Dr Heinz Reinwald with an address in Germany. Other invoices show that the goods were sold to a company called 'dr reinwald global health ltd' with an address in Cyprus and shipped to a company called 'dr reinwald healthcare gmbh' with an address in Germany. An invoice dated 14 June 2013 shows that goods sold to 'dr reinwald global health ltd' were shipped to Kerstin Reinwald, i.e. the applicant herself, whereas others invoices show that goods sold to Dr Reinwald were shipped to 'Dr Reinwald + Partner' (with no address). The invoices, dated on various dates in 2009, 2010, 2011, 2012, 2013, and 2015, are for significant amounts and show total sales of (according to my calculation) over 4.6million euros.

30. Prof Lucà explains that the opponent's distribution relationship with Dr Reinwald broke down as a result of Dr Reinwald allegedly committing plagiarism by publishing a book under the pseudonym of Lars Johansson titled "*The protein revolution! MAP Master Amino Acid Pattern. The discovery of the human amino acid pattern and its significance for protein nutrition*" which reproduced Prof Lucà's work to which Dr Reinwald had access while working as Prof Lucà's personal translator at the previously mentioned seminars.

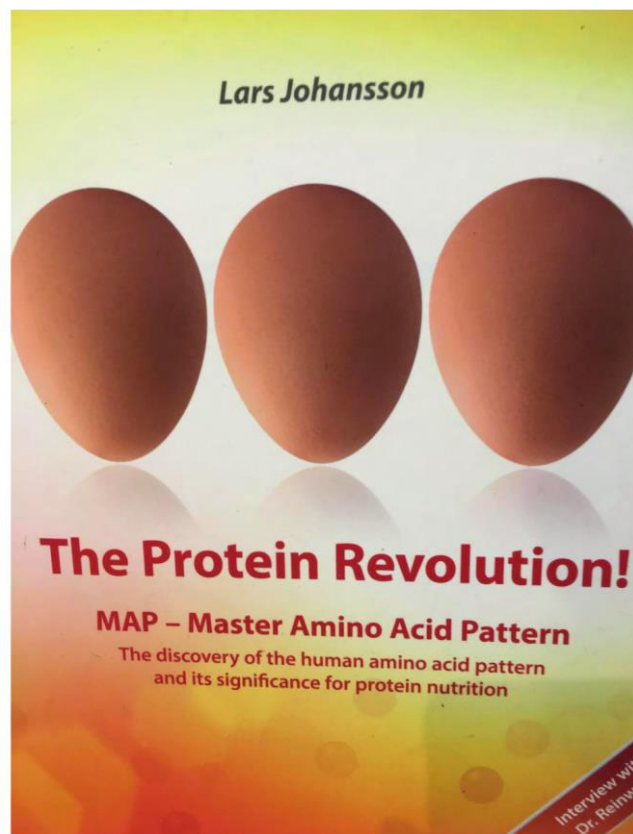
31. Prof Lucà states that it was Dr Reinwald himself who showed him the incriminating book on one occasion when he was invited as a speaker at "the World Congress" by Dr Reinwald, and that having confronted Dr Reinwald and informed him that his behavior was unacceptable and that the copyrights of the content of the book belonged to the opponent, Dr Reinwald allegedly answered: "*Professor send me a document to be sign by me, to transfer the book copyrights to the opponent and I will transfer them immediately*" which he did not do.

32. Prof Lucà goes on to explain that after the confrontation with Dr Reinwald, but before he started his intervention to the Congress, Dr Reinwald introduced him to two of his friends who were invited speakers, one of which (friend A) was an Italian physician who claimed to have invented a "*homemade miraculous yogurt*" for cancer patients, sold for approximately 370 euro per dose, whereas the other (friend B) was responsible for manufacturing the product in the UK. Prof Lucà says that at that point he realized that the purpose of the Congress' main speakers was to mislead the audience providing pseudo-scientific information, just to take monetary advantage from cancer patients and that during his (i.e. Prof Lucà's) intervention, he explained to the audience that "*the use of MAP was not to prevent or to treat cancer, but only to provide nutritional support to those cancer patients who had cachexia, also known, as wasting syndrome*". Prof Lucà then says that a few weeks after the Congress, when he was back in the USA, he received a call from Dr Reinwald who stated:

"Professor, I found where the real money is. I can do a "vial" for cancer patients that cost me only about Euro 3.50 and I can sell it to cancer patients for about Euro 3,400.00!"

33. According to Prof Lucà, he told Dr Reinwald that he was a dishonest man and communicated to him that their personal and business relationship was ended.

34. Insofar as the allegations against Dr Reinwald are corroborated by evidence, Prof Lucà produces a picture of the incriminating book and an extract of an interview Dr Reinwald gave (this appears to be contained in chapter 8 of the aforementioned book), in which he refers to having been able to gain deeper insight into how the MAP amino acid combination works by attending the seminars delivered by Prof Lucà in Austria and Germany in the years 1999-2000 where Prof Luca' introduced 'MAP' to a broader expert audience:



Interview: Lars Johansson in conversation with Dr. Heinz Reinwald, alternative practitioner

? Dr. Reinwald, you've been working with MAP in the field of nutritional consultancy for almost twelve years. When and/or how did you come across MAP?

Prof. Lucà-Moretti delivered various seminars and lectures in Austria and Germany between 1999 and 2001, which introduced MAP to a broader expert audience in Northern Europe for the first time. I learned about the amino acids findings at one such seminar and was immediately enthusiastic about the nutritional and physiological possibilities offered by MAP. Prof. Lucà-Moretti held seminars and lectures throughout Europe until about 2007. I attended some of these in Germany as a translator, so I was able to gain deeper insight into how this amino acid combination worked, as well as information on the top-level research carried out by Prof. Lucà-Moretti. I was, and still am, in contact with him for much of the time, and was able to learn a lot from him through many private conversations.

Being a rather conservative lady from the country, she was skeptical about doctors. She simply did not want to go to the doctor or take any medication. So I suggested that she try the diet program outlined by Prof. Lucà-Moretti's Institute with MAP.

When I visited her eight weeks later, I got something of a surprise. She had stuck strictly to the metabolic program guidelines, lost about seven kilos and was fine on her feet. She demonstrated this to me by getting up from her chair and sitting back down several times, waving her arms around wildly. And she kept balling up her fists in order to stretch out her fingers, saying: "Look, darling! I could even dance Flamenco!" What could be more convincing than that kind of profound experience, especially when it's your own mother. It had a huge impact on me. There was a massive leap from the theoretical information in the seminar straight into rea-



35. Prof Lucà also alleges that Dr Reinwald's friend B was arrested by the UK police due to the production and sale of the "miraculous yogurt" and produces a copy of an online article from the BBC dated May 2020, corroborating the claim, and showing that friend B, the boss of a UK drug company, was in fact arrested in relation to the sale and distribution of an unlicensed cancer cure from France. I have cross-referenced this evidence with that of a conference flyer showing that (together with Prof Lucà, Dr Reinwald and friend A) friend B was a speaker at the "World Congress on Biological Cancer Treatment" - this is the exact name of the Congress to which Prof Lucà refers in his narrative evidence. The Congress was held on 22 and 23 November 2014 in Frankfurt and, notably, it was organized by Dr. Reinwald together with friend B's business. Prof Lucà alleges that Dr Reinwald was also arrested, but that claim is not supported by evidence.⁹

⁹ The article which is supposed to support that claim talks about a 63-year-old naturopath and economist going to prison for four years for selling the controversial cancer drugs "Rerum" and "Rerum blue" to patients and therapists without authorization through his company in Altdorf in Central Franconia and in Cyprus. Whilst I note that Dr

36. Prof Lucà says that the opponent is currently party to several ongoing trade mark disputes and oppositions in relation to its 'MAP' trade marks against Dr Reinwald and his wife Kerstin Reinwald, i.e. the applicant herself. One such dispute is an EU cancellation action against IR no. 1087307 'MAP', filed in the name of Dr Reinwald. Prof Lucà produces a copy of written submissions filed by the opponent in EU proceedings dated 19 May 2023; the submissions set out the opponent's attack on Dr Reinwald's EU IR no. 1087307 which contains multiple references to bad faith.

37. Another set of proceedings relates to a German dispute. An authenticated copy (translated) of the decision of the Nuremberg Higher Regional Court is exhibited. It shows that the German Higher Regional Court decided on an appeal against a decision of the German district court, i.e. the court of first instance, dated 24 July 2019 which involved (a) a claim brought by the opponent against Dr Reinwald and his company 'dr. reinwald healthcare gmbh + co.kg' for the transfer of two trade mark registrations, namely German trade mark no. 302009007309 'MAP' filed on 6 February 2009 and registered on 23 September 2009, and IR no. 1087307 'MAP' filed on 13 April 2011 and registered on 26 November 2014 and (b) a counterclaim for the opponent's EUTMs no. 000960633 'MAP MASTER AMINO ACID PATTERN' filed on 20 October 1998 and registered on 26 January 2000, and no. 006754782 'MASTER AMINO ACID PATTERN MAP' filed on 3 March 2008 and registered on 5 February 2009, to be declared invalid. The court of first instance ordered as follows:

- Dr Reinwald to transfer the German trade mark no. 302009007309 'MAP' to the opponent;
- Dr Reinwald to transfer the IR no. 1087307 'MAP' to the opponent insofar as it extended to Germany;
- The opponent's EUTMs to be declared invalid because they lacked the required distinctive character;

Reinwald studied economy in Nürnberg, that the arrest was carried out in Nuremberg, and that dr. reinwald healthcare gmbh + co.k has an address in Altdorf – which would correspond with the description of the arrested person being a naturopath and economist, having studied and living in Nürnberg and being the owner of a company with an address in Altdorf, the article does not name the individual and contains no reference to the name of the company.

38. Both parties appealed, with Dr Reinwald objecting to the transfer of the trade marks awarded by the court of first instance, and the opponent objecting to the declaration of invalidity of the EUTMs. I have read the decision. Contrary to the opponent's claim that the decision of the German Court found that the German trade mark was filed in bad faith, the document exhibited does not contain any reference to bad faith. Nevertheless, the decision reports that in its reasoning, the court of first instance stated that the transfer in relation to German trade mark no. 302009007309 was based on the existence of an agent relationship between the parties within the meaning of Sections 11 and 17 of the German Trade mark Act ("GTMA") and Article 6 *septies* of the Paris Convention. The decision also explains that pursuant to Section 11 of the GTMA, a trade mark may be cancelled if it has been registered without the consent of the proprietor of the trade mark by his agent or representative, and in such cases Section 17 of the GTMA provides for claims for, *inter alia*, the assignment of trade marks. It further states (my emphasis):

"With these provisions, the law complies with the requirements of Art. 6 *septies* PV. In this way, the trademark owner is to be protected against a disloyal agent or representative who arbitrarily appropriates a trademark which the principal - regularly abroad - has previously claimed for himself and which is typically only of interest to the agent when he takes over the representation."

39. The decision explains that in addition to finding that there was an agency relationship between the opponent and Dr Reinwald, the court of first instance found that the opponent possessed trade marks which were earlier compared to those of Dr Reinwald, and that the fact that the opponent's prior rights (i.e. the EUTMs nos. 000960633 and 006754782) were declared invalid was irrelevant.

40. Insofar as it helps to understand the overlap between the EU proceedings and the German proceedings, they both relate to the same IR no. 1087307. It is also apparent that the EU proceedings were launched following the outcome of the German's appeal whereby the court upheld Dr Reinwald's appeal that the opponent could not claim the transfer of the IR no. 1087307 (or of the part of the IR relating to the German territory) because of the unitary effect of a EUTM (or of an IR designating the EU).

41. The only evidence directly relating to the applicant (save for that already referred to above) is as follows:

- A copy of an email dated April 2012 sent by the applicant to Prof Lucà whereby she refers to Heinz as 'my husband'. In the email, the applicant appears to act on behalf of her husband's company as shown by the multiple references to the company name 'dr.reinwald healthcare gmbh + co kg':



- An extract from the applicant's personal LinkedIn page showing that the applicant was CEO of two companies incorporating Dr Reinwald's name, namely 'dr reinwaid vital' and 'dr. reimwald global health ltd'. The extract is undated, but it is possible to date it around June 2023 as it indicates that the applicant worked at 'dr reinwaid vital' it from March 2020 to "present" for 3 years and 3 months, and at 'dr. reimwald global health ltd' from 2013 to "present" for 10 years and 5 months;

- Copies of IR no. 1664272 'MAP' in the name of Kerstin Reinwald (with a filing date of 21 March 2022) and IR no. 1087307 in the name of Dr Heinz Reinwald (this is the mark subject to the EUIPO invalidity proceedings). Prof Lucà points out that the holder's address for these registrations is the same and is in Cyprus.

Assessment

42. In relation to the objective that the applicant has been accused of pursuing, the opponent claims that the applicant had knowledge of the opponent's use of the mark 'MAP' in relation to goods in Class 5 as she held a senior position at a company which acted as an agent for the opponent and a distributor of the opponent's products. The opponent also claims that the applicant has not provided any plausible explanation for her objectives and commercial logic in filing the application and that she intended to acquire registered rights in relation to a mark that does not belong to her following the breakdown of the distribution relationship between the opponent and the company for which she was the CEO. In these circumstances, the opponent claims, it was dishonest for the applicant to apply for the mark.

43. The fact that the applicant knows or should know that a third party is using a mark abroad at the time of filing her application which is liable to be confused with the mark whose registration has been applied for is not sufficient, in itself, to permit the conclusion that the applicant is acting in bad faith.¹⁰ However, an application to register a mark is likely to have been filed in bad faith where the applicant knew that a third party used the mark in the UK, or had reason to believe that it wished to do so in the future, and intended to use the registration to its own unfair advantage.¹¹ The opponent's pleaded case falls into the latter category.

44. I shall now consider whether the evidence establishes a *prima facie* case that the application was filed in pursuit of these objectives.

¹⁰ *Malaysia Dairy Industries Pte Ltd v Ankenævnet for Patenter og Varemærker* Case C-320/12 paragraph 37.

¹¹ *Daawat Trade Mark*, [2003] RPC 11

45. Most of the evidence filed is about Dr Reinwald and his actions. There is very little evidence about the applicant, Kerstin Reinwald, but what there is, is sufficient to establish that the applicant and Dr Reinwald know each other, as they are indeed husband and wife (and they were married prior to the relevant date).

46. At the relevant date, the applicant was the CEO of two companies connected with Dr Reinwald, namely "*reinwald global health ltd*" (of which Dr Reinwald was the Managing Director in 2014)¹² and "*dr reinwald vital*" (which, Prof Lucà says, was added on the label of 'MAP Master Amino Acid Pattern' products sold by the opponent to Dr Reinwald and distributed by Dr Reinwald in Germany).

47. In addition, in the email dated 13 April 2012, the applicant personally accepted Prof Lucà's invitation and explained that her husband could not attend the meeting because he was working in Spain; that email included the logo and company name "*dr. reinwald healthcare gmbh + co.kg*", of which Dr Reinwald was Managing Director¹³ and which was (along with Dr Reinwald) a defendant in the German proceedings mentioned above.

48. In the light of the above, it is clear that the applicant played an active role in the business affairs of her husband, Dr Reinwald, and assumed an important role in the management of his companies.

49. Further, it is tolerably clear on the evidence that 'MAP' is a brand that belongs to the opponent. 'MAP' stands for 'MASTER AMINO ACID PATTERN' and is used in relation to a food supplement product developed by the opponent for which the opponent obtained a US patent. The applicant has not denied that her husband, Dr Reinwald acted as a distributor of the opponent's 'MAP' products in the EU. Her defence is that if the bad faith grounds relied upon by the opponent relate to the alleged actions of someone other than herself, they should be dismissed out of hand. In the counterstatement and written submissions, the applicant seems to say that in order to establish bad faith the opponent must prove that there was a previous commercial

¹² Exhibit 5 (page 9)

¹³ Exhibit 5 (page 9)

relationship between the opponent and the applicant herself in the UK in relation to the use of the mark 'MAP', and that her position is that there has never been such a relationship.

50. Firstly, it is important to bear in mind that the applicant did not file any evidence in reply to the opponent's evidence. The applicant's written submissions are no more than a bland denial of the opponent's case. Whilst the applicant says that the allegations made by Prof Lucà are false and irrelevant, she did not challenge the credibility or accuracy of the opponent's evidence in any details and did not put forward any alternative position or countered Prof Luca's evidence with any contradictory evidence of her own. The applicant simply saying that the facts set out in Prof Luca's evidence are not true (particularly given that she has not done so under a statement of truth) is not enough to disbelieve Prof Luca's evidence.

51. In my view, the opponent's evidence, which I find to be clear and consistent, is sufficient to establish that between 2009 and 2015 Dr Reinwald acted as a distributor of the opponent's 'MAP' products, with a focus on the German market. This is supported by the invoices showing substantial sales of 'MAP' labelled products by the opponent to Dr Reinwald and his companies, and by the examples of German-language labels bearing the opponent's mark 'MAP' and the name "*dr. Reinwald + vital*".

52. Further, whilst I bear in mind that the decision of the German Court is not binding upon me, it supports my reading of the evidence to the effect that it concludes that Dr Reinwald was acting as a distributor for the opponent when he sold 'MAP' branded goods in Germany.

53. Admittedly, the German Court uses the term 'agent' rather than 'distributor', however, the Court explained that the term 'agent' must be interpreted broadly according to the case law of CJEU which establishes that it is sufficient that there is an agreement between the parties on a business cooperation which is capable of creating a relationship of trust by imposing on the agent a general duty of loyalty and fidelity with regard to the interests of the proprietor of the earlier mark. In this connection, the German Court found that from 2009, Dr. Reinwald ordered the 'MAP'

products from the opponent, and that from 2010 onwards the products were distributed by his company “*dr. reinwald healthcare gmbh + co.kg*”. The Court concluded that there had been a very extensive business relationship between the parties that went beyond a mere exchange of goods, in the context of which Dr. Reinwald and “*dr. reinwald healthcare gmbh + co.kg*” distributed the opponent's ‘MAP’ product on a large scale. Finally, the Court found that there was a cooperation in the preparation of lectures, seminars, and brochures, as well as other branding efforts to publicize the trade mark ‘MAP’ and that although Dr Reinwald and his company used their own label ‘MAP Master Amino Acid Pattern’ to distribute the opponent’s products, this was done with the knowledge and consent of (and in consultation with) Prof Lucà. I think the same conclusions can be drawn from the evidence before me. Further, the applicant did not argue that Dr Reinwald resold the opponent’s ‘MAP’ products on its own account and not on behalf of, or as an agent of the opponent; on the contrary the evidence shows that the products sold by Dr Reinwald bore Prof Lucà’s name and the opponent’s ‘MAP’ branding.

54. As regard the applicant’s role, it is significant that a good proportion of the invoices that have been produced in evidence¹⁴ shows sales of ‘MAP’ products from the opponent to “*dr. reinwald global health ltd*” between 2013 and 2015 when the applicant was the CEO of that company; one of the invoices, even gives the applicant’s name and her telephone contact in the box “shipping”, as shown below:

INRC INTERNATIONAL NUTRITION RESEARCH CENTER, INC.
7900 Los Pinos Circle - Coral Gables - FL 33143 - Ph: (305) 666-9222 - Fax: (305) 740-7478

EIN: 65-0609386

Date: **June 14, 2013**

SOLD TO:
dr.reinwald global health ltd
[REDACTED]

INVOICE No.: **1469-2013**

SHIPPED TO:
Kerstin Reinwald
Tel. (49) 9128 [REDACTED]
Fax: (49) 9128 [REDACTED]

¹⁴ Exhibit 4

55. Applying the same reasons I have given for finding that Dr Reinwald acted as an agent and distributor of the opponent's 'MAP' products, I find that the company *dr. reinwald global health ltd* also acted as an agent and distributor of the opponent's 'MAP' products.

56. Since the applicant was the CEO of *dr. reinwald global health ltd* when the company acted as a distributor of the opponent's 'MAP' products and the wife of Dr Reinwald, who is the controlling mind behind all the companies that sold the opponent's 'MAP' products, and given the large volume of 'MAP' branded products sold to Dr Reinwald and his companies between 2009 and 2015, it is unlikely that the applicant randomly filed the application for registration of the contested mark 'MAP', without being aware of the opponent's mark 'MAP'. The applicant provided no explanation as to how she came up with a sign that is identical to the opponent's mark 'MAP' for identical goods.

57. In my view, as a result of the direct commercial relationship of the opponent with the applicant's husband and with the businesses of which the applicant was CEO, the applicant must have known that the opponent was using in good faith and in regular manner, an identical mark for identical goods within the EU. The fact that the location where these facts occurred was outside the UK is not determinative. Likewise, the fact that the opponent did not have goodwill in the UK at the relevant date is not fatal; it is sufficient that the party alleging bad faith has used an identical or similar mark before the filing date of the contested mark (either in the UK or elsewhere) which in this case has been proven. Furthermore, the opponent has shown that it had applied to protect the sign 'MAP' in other countries before the filing date of the contested mark, including the EU in 1998 and 2008 when the UK was part of the EU. Finally, I take into account that (1) prior to the relevant date the opponent set up a UK company with a view of distributing 'MAP' branded goods within the EU, (2) there are customer reviews which demonstrates that the opponent had sold 'MAP' branded goods through UK websites prior to the relevant date (albeit, not enough to establish a protectable goodwill);¹⁵ (3)

¹⁵ Exhibit see 10 reviews from <https://www.synergy-health.co.uk/shop/master-amino-acid-pattern-map-120-tabs>.

copies of webpages from Amazon.co.uk show that the opponent's 'MAP Master Amino Acid Pattern' products were first available in the UK since 25 September 2018.¹⁶

58. Taking all of the above into account, my conclusion is that the opponent has established a *prima facie* case that the application was made with the intention of undermining or misappropriating the opponent's rights in the mark 'MAP' in the UK. Furthermore, the fact that the applicant filed the application after the decision of the German Court had found that her husband, Dr Reinwald, had acted as a disloyal agent of the opponent and had arbitrarily appropriated the opponent's trade mark, supports the opponent's allegations that the application was filed in the name of the applicant as a deceitful tactic. This is because by filing the application in the applicant's name, the applicant was fronting for her husband in order to avoid further declarations of invalidity based on the dishonest behaviour of her husband who had acted as a distributor for the opponent. This is, in my view, unacceptable commercial behaviour to the point of bad faith. The applicant's mere denials are not sufficient to displace the *prima facie* inference of bad faith.

59. The opposition based upon Section 3(6) of the Act succeeds in its entirety.

Section 5(6)

60. Section 5(6) of the Act states as follows:

“(6) Where an agent or representative (“R”) of the proprietor of a trade mark applies, without the proprietor's consent, for the registration of the trade mark in R's own name, the application is to be refused unless R justifies that action.”

61. In *Mouldpro ApS v EUIPO*, Case T-796/17, the General Court (“GC”) summarised the case law about when a party may be regarded as ‘agent’ or ‘representative’ of an opponent or applicant for invalidation. The court stated that:

¹⁶ Exhibit 10 see page 3/6

“21. It is apparent from the wording of Article 60(1)(b) of Regulation 2017/1001 that, for an opposition to succeed on that basis, it is necessary, first, for the opposing party to be the proprietor of the earlier mark; second, for the applicant for the mark to be or to have been the agent or representative of the proprietor of the mark; third, for the application to have been filed in the name of the agent or representative without the proprietor’s consent and without there being legitimate reasons to justify the agent’s or representative’s action; and, fourth, for the application to relate in essence to identical or similar signs and goods. Those conditions are cumulative (judgment of 13 April 2011, *Safariland v OHIM— DEF-TEC Defense Technology (FIRST DEFENSE AEROSOL PEPPER PROJECTOR)*, T-262/09, EU:T:2011:171, paragraph 61).”

62. The European Courts have also given the following guidance:

(a) The terms ‘agent’ and ‘representative’ must be interpreted broadly, covering all kinds of relationships based on a contractual agreement where one party represents the interests of the other. It is sufficient that the agreement or commercial cooperation between the parties gives rise to a fiduciary relationship by imposing on the applicant, whether expressly or implicitly, a general duty of trust and loyalty as regards the interests of the proprietor of the earlier mark (*EUIPO v John Mills Ltd & Jerome Alexander Consulting Corp.*, Case C-809/18 P, EU: C:2020:902, paragraph 85);

(b) It does not matter how the contractual relationship between the proprietor or principal, on the one hand, and the applicant for the trade mark, on the other, is categorised (*FIRST DEFENSE AEROSOL PEPPER PROJECTOR*, T-262/09, EU:T:2011:171, paragraph 64, and *Moonich Produktkonzepte & Realisierung v OHIM— Thermofilm Australia (HEATSTRIP)*, T-184/12, not published, EU:T:2014:621, paragraph 58);

(c) Nevertheless, some kind of agreement must exist between the parties. A mere purchaser or client of the proprietor cannot be regarded as an ‘agent’ or as a ‘representative’ (*FIRST DEFENSE*, paragraph 64);

(d) The misuse of the mark may occur both where the earlier mark and the mark applied for by the agent or representative are identical, and where the marks at issue are similar (*EUIPO v John Mills Ltd*, paragraphs 70-73);

(e) The protection also extends to cases where the goods and services are only similar and not identical (*EUIPO v John Mills Ltd*, paragraphs 98-99);

(f) The specific protection afforded by Article 8(3) is not to be assessed on the basis of whether the similarity between the marks results in a likelihood of confusion (*EUIPO v John Mills Ltd*, paragraph 92);

(g) The assessment of similarity between the goods and services should take all relevant factors into account, including, in particular, their nature, their intended purpose, their method of use and whether they are in competition with each other or are complementary (*EUIPO v John Mills Ltd*, paragraph 100 and *The Tea Board v EUIPO*, C-673/15 P to C-676/15 P, EU:C:2017:702, paragraph 48).

63. As the opponent's claim under this ground is made on the same basis as that under Section 3(6), I can deal with it swiftly. The case law referred to above establishes that one of the (cumulative) conditions of a successful claim of this kind is that the application must have been filed in the name of the agent or representative without the proprietor's consent and without legitimate reasons to justify the action. I explained above that, based upon the evidence filed in these proceedings it was Dr Reinwald, the applicant's husband, who acted as an agent for the opponent. Although the applicant must have known that there was a commercial relationship of the opponent with her husband and the companies of which she was CEO, she did not act personally as an agent for the opponent and did not have a direct relationship with the latter. For these reasons, the opponent's claim does not satisfy that condition.

64. The opposition based upon Section 5(6) of the Act fails.

CONCLUSION

65. The opposition against the IR no. 1664272 has succeeded. Subject to any appeal against my decision, the IR no. 1664272 will be refused protection in the UK.

COSTS

66. The opponent has been successful and is, therefore, entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 2/2016. In the circumstances, I award the opponent the sum of **£2,700**, calculated as follows:

Preparing a notice of opposition	£500
Preparing and filing evidence	£1,500
Preparing written submissions in lieu	£500
Official fee	£200
Total	£2,700

67. I therefore order Kerstin Reinwald to pay International Nutrition Researcher Center, Inc the sum of **£2,700**. This sum is to be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 6th day of June 2024

Teresa Perks
For the Registrar