

O/0552/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00004140045

BY D DIEMS INTERNATIONAL LTD

TO REGISTER THE TRADE MARK:



IN CLASS 5

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 452834

BY ASTELLAS US LLC

Background and pleadings

1. On 21 December 2024, D Diems International Ltd (“the applicant”) applied to register the trade mark shown on the cover page of this decision in the UK. The application was published for opposition purposes on 10 January 2025. Registration is sought for ‘nutritional supplements’ in class 5.

2. The application was opposed by Astellas US LLC (“the opponent”) on 4 March 2025. The opposition is based upon section 5(2)(b) of the Trade Marks Act 1994 (“the Act”) against all applied for goods.

3. The opponent relies on the following trade mark:

UK00918279338¹

VEOZA

Filing date: 28 July 2020

Registration date: 11 December 2020

Relying on all goods for which it is registered as follows:

Class 5: Pharmaceutical preparations, products and substances for the treatment and management of symptoms and/or medical diagnoses relating to women's health.

4. The opponent claims that the marks and goods are identical/similar and this will give rise to a likelihood of confusion.

¹ On 1 January 2021 the UK left the EU. Under Article 54 of the Withdrawal Agreement between the UK and the EU, the UKIPO created comparable UK trade marks for all right holders with an existing EUTM. As a result of the opponent's EUTM number 18279338 being registered as at the end of the Implementation Period, a comparable UK trade mark was automatically created. The comparable UK mark now recorded on the UK trade mark register has the same legal status as if it had been applied for and registered under UK law.

5. The applicant filed a counterstatement denying the claims made by the opponent.

6. Both parties are self-represented in these proceedings. Neither party filed evidence nor requested a hearing. The opponent filed submissions dated 8 July 2025. This decision is therefore taken following careful consideration of the papers.

7. 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.

Decision

8. Section 5(2)(b) is being relied upon and is as follows:

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

[...]

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

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

9. The opponent's mark qualifies as an earlier mark, in accordance with section 6 of the Act. As the earlier mark has not been registered for five years or more before the application date of the contested mark, it is not subject to proof of use requirements. Therefore, the opponent can rely upon all of the goods identified in its Form TM7.

Case law

10. The following standard summary of the principles applicable to the assessment of the likelihood of confusion was approved by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc & Anor*, [2025] UKSC 25:

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

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

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

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

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

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

(g) a lesser degree of similarity between the goods or services may be offset by a 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

11. In the judgment of the Court of Justice of the European Union (“CJEU”) in *Canon*, Case C-39/97, the court stated at paragraph 23 that:

“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”.

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

(a) The respective uses of the respective goods or services;

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

13. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods (or services). In *Boston Scientific Ltd v OHIM*, Case T-325/06, the General Court (“GC”) stated that ‘complementary’ means:

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

14. The goods at issue are as follows:

Contested goods	Opponent's goods
Class 5: Nutritional supplements	Class 5: Pharmaceutical preparations, products and substances for the treatment and management of symptoms and/or medical diagnoses relating to women's health.

15. The contested goods are designed to supplement a normal diet or promote good health. The opponent's are pharmaceutical preparations/products, in this case specifically aimed at treatment or symptom management for women's health issues. The contested goods are not limited and therefore, could include nutritional supplements aimed at assisting with women's health issues. I consider that it is possible for some nutritional supplements to be pharmaceutical preparations/products and therefore, I find these goods to be identical.

16. In the event that I am wrong in this finding, I consider there to be an overlap in user and general purpose as the contested goods may also be used for health support, including women's health. Both may be ingested in tablet, powders, liquids or capsule form, however, pharmaceuticals may be administered through other methods, including injection. Therefore, in some circumstances, the goods will share the same method of use. In the absence of any evidence, I do not find them to be in competition, nor do I believe them to be complementary. I believe both goods are likely to be found in close proximity in chemist's shops and therefore, there is an overlap in trade channels. As a consequence, I find the goods similar to a high degree.

Average consumer and the purchasing act

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

18. In *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc & Anor*, [2025] UKSC 25, the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)* [2024] EWCA Civ 262, where he pointed out that:

(a) Consumers who are ill-informed or careless, or consumers with specialised knowledge or who are excessively careful are excluded from consideration;

(b) The average consumer provides a standard which enables the courts to strike a balance between the competing interests involved, such as trade mark owners, their competitors and consumers;

(c) The average consumer is neither a single hypothetical person nor a mathematical average; assessment from the perspective of the average consumer does not involve a statistical test. There is no single meaning rule and if, having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, a finding of infringement may properly be made;

(d) Assessment from the perspective of the average consumer is intended to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by enabling courts and tribunals to determine such issues so far as possible without the need for evidence;

(e) The average consumer's level of attention varies according to the category of goods or services in question; and

(f) the average consumer rarely has the opportunity to make direct comparisons between trade marks (or between trade marks and signs) and must instead rely upon the imperfect picture of the trade mark they have kept in their mind.

19. The relevant goods are directed at both the public at large and medical professionals. Generally, as per *Olimp Laboratories sp. z o.o. v EUIPO*, Case T-

817/19, the level of attention is likely to be higher where pharmaceuticals are concerned. I consider this to extend to nutritional supplements also as consumers are likely going to carefully consider goods that they intend to ingest in some form for the support of their health. I therefore find that a higher than average level of attention will be paid even where the goods are relatively low cost.

20. I believe it to be a largely visual process, the consumer will handle the goods to check that they are suitable for their needs/symptoms/illness. If the consumer is buying online then I also note they will see the marks on the websites. I do not, however, ignore the potential for the marks to be spoken, for example, by pharmacists, doctors or sales assistants.

Comparison of the marks

21. 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.”

22. 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.

23. The respective trade marks are shown as follows:

Contested mark	Earlier mark
	VEOZA

24. The earlier mark is a word mark comprising one word and the overall impression therefore lies in that word.

25. The contested mark has a large device which comprises the letter 'V' in a slightly stylised font with what I consider to be either a vine/leaves or a bird intertwined with the left vertical line of the 'V'. Underneath the device is a word element "V' ELZA". Even though the word element is smaller in presentation, I consider it to be at least equally dominant (if not slightly more dominant) to the 'V' device as that is the element the mark will be referred to.

26. Turning to the visual comparison, both marks contain the letters V, E, Z and A within the word elements and in the same order. The marks differ in the letters L and O respectively, the inclusion of the apostrophe and the large device element in the contested mark which has no counterpart in the earlier mark. Taking all this into account, I find the marks to be visually similar to a medium degree.

27. The applicant submits in their counterstatement that "phonetically, V'ELZA is spoken as "Vee-El-Za," whereas VEOZA would be spoken as "Vay-O-Zah" or "Vee-O-Zah"". The opponent has stated within their submissions that this is an admission from the applicant that the marks are highly aurally similar, however, no such admission has been explicitly stated. I do not necessarily agree with how the contested mark will be articulated however, as both parties are in agreement on this, I must

proceed on this basis. I believe that the opponent's mark will more likely be articulated as "VEE-O-Zah". Therefore, the marks aurally overlap with their beginning and ends however, the middles do differ. I do not believe that the device element in the contested mark will be articulated. I therefore find the marks to be aurally similar to between a medium and a high degree.

28. Conceptually, I believe that neither 'V'ELZA' nor 'VEOZA' have an ordinary dictionary meaning and nothing that would spring to the consumer's mind or be allusive to the goods. The device in the contested mark is a 'V' and does not add any particular meaning. As both marks contain words without attributable meanings, the marks are conceptually neutral.

Distinctive Character of the Earlier Mark

29. In *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).”

30. Registered trade marks possess varying degrees of inherent distinctive character, being lower where they are allusive or suggestive of a characteristic of the goods and/or services, ranging up to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctive character of a mark can be enhanced by virtue of the use that has been made of it. I have been provided with no such evidence and, therefore, only have the inherent position to consider.

31. As explained above, the earlier mark is an invented term with no apparent link to the goods for which it is registered. Therefore, I consider that it is inherently distinctive to a high degree.

Likelihood of Confusion

32. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and vice versa. It is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the goods and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

33. The following factors must be considered to determine if a likelihood of confusion can be established:

- I have found the marks to be visually similar to a medium degree and aurally similar to between a medium and high degree.
- As both marks are invented terms with no apparent link to the goods, they are conceptually neutral.
- The earlier mark is a word mark comprising of a single word 'VEOZA' and therefore, that is where the overall impression lies.
- The word element of the contested mark is at least equally dominant (if not slightly more dominant than the device element).
- I consider that the average consumer is likely to be the general public and medical practitioners. I have concluded that a higher than average level of attention will be paid during the purchasing process. I have also found the purchasing process to be largely visual.
- I have found the goods to be identical or similar to a high degree.
- The earlier mark is inherently distinctive to a high degree.

34. I consider that even though the goods are identical (or alternatively highly similar), the size and placement of the 'V' device is such that consumers, particularly those paying a higher level of attention, will not likely overlook it. This applies even though the marks are aurally similar to between a medium and high degree and there is no conceptual distinction between the marks. Therefore, I do not consider there to be a likelihood of direct confusion.

35. I will now go on to consider whether there could be indirect confusion. Mr Iain Purvis Q.C. (as he then was) said further in *L.A. Sugar Limited v Back Beat Inc*:

"Instances where one may expect the average consumer to reach such a conclusion 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

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).”

36. These examples are not exhaustive but provide helpful focus, as was confirmed by Arnold LJ in *Liverpool Gin Distillery Limited & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207:

“This is a helpful explanation of the concept of indirect confusion, which has frequently been cited subsequently, but as Mr Purvis made clear it was not intended to be an exhaustive definition.”²

37. In the case of indirect confusion, the average consumer has noticed the differences between the marks but still believes them to be linked. I have outlined the differences above as being the large device element in the contested mark and the different letter and the inclusion of an apostrophe.

38. Given that the device element is built around the initial letter of the word element in the contested mark, I consider that it may be perceived as a stylised presentation connected with that word element, rather than as indicating a wholly separate commercial origin. The word elements differ only by the substitution of one middle letter and the inclusion of an apostrophe, and they otherwise share the same sequence of letters V, E, Z and A. Bearing in mind the high inherent distinctiveness of the earlier mark, the identity of the goods, or alternatively their high degree of similarity,

² Paragraph 12

and the principle of imperfect recollection, I consider that the average consumer who notices the device may nevertheless believe that the goods originate from the same or economically linked undertakings because they have imperfectly recalled the words.³ Therefore, I consider there to be a likelihood of indirect confusion.

Conclusion

39. The opposition is successful in its entirety and the application is refused, subject to any successful appeal.

Costs

40. As the opponent has been successful, it is entitled to a contribution towards its costs. Awards of costs are governed by Annex A of Tribunal Practice Notice ("TPN") 1/2023. The opponent would normally be entitled to a contribution towards its costs.

41. However, as the parties are unrepresented, following the conclusion of the evidence rounds, the tribunal wrote to them and invited them to indicate whether they intended to make a request for an award of costs. The parties were informed that, if so, they should complete a Pro Forma, providing details of their actual costs and accurate estimates of the amount of time spent on various activities associated with the proceedings. They were informed that "if the pro forma is not completed and returned, costs, other than official fees arising from the action (excluding extensions of time) may not be awarded".

42. The opponent did not file a completed Pro Forma. Therefore, I can only make an order in relation to the official fees paid.

43. I order D Diems International Ltd to pay Astellas US LLC the sum of £100. 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.

³ [2013] EWHC 589 (Ch) Aveda Corp, paragraph 48

Dated this 30th day of June 2026

**L Nicholas
For the Registrar**