

O/0571/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00004227482
IN THE NAME OF KP PHARMA HEALTH LTD
TO REGISTER THE FOLLOWING TRADE MARK:



IN CLASSES 3, 5, 9, 10 & 44

AND

IN THE MATTER OF OPPOSITION THERETO
UNDER NO. OP600003878
BY HN MERCHANTS LIMITED

Background and pleadings

1. On 01 July 2025, KP PHARMA HEALTH LTD (“the Applicant”) applied to register the trade mark shown on the cover page of this decision in the UK. It was accepted and published in the Trade Marks Journal on 19 September 2025 in respect of goods and services in classes 3, 5, 9, 10 and 44.¹
2. On 31 October 2025, HN MERCHANTS LIMITED (“the Opponent”) opposed the application under the fast track opposition procedure, based upon sections 5(1), 5(2)(a) and 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opposition is directed at all goods in class 3 of the application, as set out in paragraph 19 of this decision.
3. The Opponent relies upon the following mark:

pharmahealth

UK trade mark no. UK00003882907

Filing date: 27 February 2023

Registration date: 19 May 2023

Relying upon goods in class 3, as set out in paragraph 19 of this decision.

4. By virtue of its earlier filing date the above registration constitutes an earlier mark within the meaning of section 6 of the Act. As the earlier mark had not completed its registration process more than five years before the filing date of the application in issue, it is not subject to the use provisions contained in section 6A of the Act. The Opponent can, therefore, rely upon all of the goods it has identified without having to demonstrate use.
5. The Opponent submits that the goods are either highly similar or identical and that the marks are either similar or identical, resulting in a likelihood of confusion.

¹ See the Annex to this decision.

6. The Applicant filed a counterstatement in which it denies the grounds of opposition.
7. Rule 6 of the Trade Marks (Fast Track Opposition) (Amendment) Rules 2013, S.I. 2013 2235, disapplies paragraphs 1-3 of Rule 20 of the Trade Mark Rules 2008, but provides that Rule 20(4) shall continue to apply. Rule 20(4) states that: “(4) The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit.” The net effect of these changes is to require the parties to seek leave in order to file evidence in fast track oppositions.
8. Rule 62(5) (as amended) states that arguments in fast track proceedings shall be heard orally only if (i) the Office requests it or (ii) either party to the proceedings requests it and the registrar considers that oral proceedings are necessary to deal with the case justly and at proportionate cost; otherwise, written arguments will be taken.
9. A hearing was neither requested nor considered necessary, and neither party filed written submissions in lieu of the same. This decision is taken following a careful consideration of the papers.
10. The Applicant is self-represented; the Opponent is represented by Clarkwell and Co.
11. 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.

Preliminary Issues

Grounds relied upon by the Opponent

12. It is noted from the Form TM7 that the Opponent is relying upon sections 5(1), 5(2)(a) and (b) of the Act. However, as the marks at issue are clearly not identical, either *prima facie* or in accordance with the guidance laid out in *Sadas*,² I will proceed on the basis of section 5(2)(b) only.

Applicant's counterstatement

13. The Applicant raised points in its counterstatement that I intend to address as preliminary issues. Before going any further into the merits of this opposition it is necessary to explain why, as a matter of law, the points raised will have no bearing on the outcome of this opposition.

14. The Applicant submits the following:

“We deny that our Class 3 application related to traditional cosmetic or beauty products. The inclusion of Class 3 is directly linked to our integrated healthcare and pharmaceutical ecosystem and are intended for use within a professional, clinical, wellbeing and preventative healthcare context, including partnerships with medical aesthetic clinics and pharmaceutical professionals, and not for mass-market cosmetic retail.

[...]

The Opponent operated a mail-order and internet sales business, which is materially different from our professional, pharmaceutical and healthcare-focused activities.”

² S.A. *Société LTJ Diffusion v. Sadas Vertbaudet SA*, Case C-291/00

15. Differences between the goods currently provided by the parties are irrelevant, except to the extent that those differences are apparent from each party's specification. It is the goods relied upon by the Opponent, and the relevant goods applied for by the applicant that I will be comparing later in this decision. The assessment I must make between the goods is a notional and objective assessment, rather than a subjective one.
16. Furthermore, marketing strategies, including the targeting of specific sectors or consumers, are temporary and may change over time.³ As such, it is not appropriate to take marketing factors into account in my assessment. However, I will make an assessment, later in this decision, as to who the average consumer could be for the goods at issue.

Decision

Sections 5(2)(b) and 5A

17. The opposition is based upon Section 5(2)(b) of the Act, which reads as follows:

“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.

³ *Devinlec Développement Innovation Leclerc SA v OHIM*, Case C-171/06P

5A Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only.”

18. 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

19. The goods for comparison are as follows:

Opponent's goods	Applicant's goods
<u>Class 3:</u> Beauty serums; Beauty creams; Beauty lotions; Beauty care cosmetics; Beauty masks; Masks (Beauty -); Beauty soap; Beauty milk; Beauty milks; Beauty gels; Beauty creams for body care; Beauty balm creams; Facial beauty masks; Beauty preparations for the hair; Beauty care preparations; Distilled oils for beauty care; Beauty tonics for application to the face; Beauty masks for hands; Beauty serums with anti-ageing	<u>Class 3:</u> Skin hydrators being injectable dermal fillers; Anti-wrinkle creams [for cosmetic use]; Anti-aging creams [for cosmetic use]; Anti-ageing creams [for cosmetic use]; Dermatological creams [other than medicated]; Creams (Cosmetic -); Cosmetic creams; Facial creams [cosmetic]; Facial creams [for cosmetic use]; Cosmetic creams and lotions; Facial creams [cosmetics]; Anti-wrinkle creams; Anti-aging creams; Cosmetic

properties; Beauty tonics for application to the body; Natural cosmetics; Body cleaning and beauty care preparations; Non-medicated beauty preparations; Natural makeup; Skincare cosmetics; Body care cosmetics; Natural perfumery; Hair cosmetics; Body and facial creams [cosmetics]; Cosmetics; Skin care cosmetics; Colour cosmetics; Facial creams [cosmetics]; Colour cosmetics for the skin; Hair care creams [for cosmetic use]; Colour cosmetics for the eyes; Body creams [cosmetics]; Cosmetic products in the form of aerosols for skincare; Anti-aging moisturizers used as cosmetics; Natural oils for cosmetic purposes; Hair care lotions [for cosmetic use]; Cosmetics for eye-lashes; Cosmetics for suntanning; Organic cosmetics; Facial makeup; Eye cosmetics; Sun care lotions [for cosmetic use]; Decorative cosmetics; Skin masks [cosmetics]; Nail cosmetics.	products in the form of aerosols for skincare; Fluid creams [cosmetics]; Anti-ageing serums for cosmetic purposes; Anti-ageing creams; Anti-aging moisturizers used as cosmetics; Depilatory creams; Anti-aging skincare preparations; Cosmetic facial lotions; Facial lotions [cosmetic]; Cosmetic creams for the skin; Skin creams [cosmetic]; Skin creams [for cosmetic use]; Cosmetic massage creams; Anti-aging serum for cosmetic use; Anti-wrinkle cream [for cosmetic use]; Self-tanning preparations [cosmetic]; Facial toners [cosmetic]; Collagen preparations for cosmetic application; Facial creams; Facial moisturisers [cosmetic]; Non-medicated skin serums; Cosmetic breast firming preparations; Cleansing creams [cosmetic]; Toning creams [cosmetic]; Hydrating creams for cosmetic use; Cosmetic face powders; Face powders [for cosmetic use]; Non-medicated skincare preparations; Self tanning creams [cosmetic]; Anti-aging moisturizers; Cosmetics in the form of creams; Facial gels [cosmetics]; Sunscreen creams [for cosmetic use]; Self-tanning preparations [cosmetics]; Body and facial creams [cosmetics]; Non-medicated creams; Cosmetic preparations for skin firming; Cosmetic moisturisers; Hair care creams [for
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	cosmetic use]; Depilatory lotions; Face creams for cosmetic use; Skin recovery creams [cosmetics]; Cosmetics and cosmetic preparations; Suncare lotions [for cosmetic use]; Cosmetic products in the form of aerosols for skin care.
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20. In *Gérard Meric v OHIM*, Case T-133/05, the General Court (“GC”) stated that:

“In addition, 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”.⁴

21. When making the comparison, all relevant factors relating to the goods in the specifications should be taken into account. 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.”

22. Guidance on this issue has come from Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, where he identified the factors for assessing similarity as:

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

⁴ Paragraph 29.

- (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.”

23. 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 and services. In *Boston Scientific Ltd v OHIM*, Case T 325/06, the GC stated that “complementary” means:

“82. ...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”.

24. For the purposes of considering the issue of similarity of the goods, it is permissible to consider groups of terms collectively where appropriate: *Separode* Trade Mark, BL O-399-10.

25. While making my comparison, I bear in mind the comments of Floyd J. (as he then was) in *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch):

"12. ... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise. ... Nevertheless the principle should not be taken too far. ... 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."

26. Neither party has provided submissions regarding the specific points of similarity, or otherwise, between the goods at issue. In conducting my comparison, I bear in mind that the goods at issue are all within class 3, which, at a general level, includes non-medicated cosmetics and toiletry preparations. I understand cosmetics to be products that are designed to enhance or maintain the appearance or condition of the user's skin, hair or body.

Body and facial creams [cosmetics]; Hair care creams [for cosmetic use]; Cosmetic products in the form of aerosols for skin care; Cosmetic products in the form of aerosols for skincare; Cosmetics [...]; Anti-aging moisturizers used as cosmetics; Suncare lotions [for cosmetic use].

27. The above goods are explicitly named in both the Applicant's and the Opponent's specifications. They are self-evidently identical.

[...] Cosmetic preparations.

28. I consider that the Applicant's above goods are encompassed within the Opponent's "cosmetics". They are therefore identical on the principle outlined in *Meric*.

Anti-aging moisturizers; Cosmetic moisturisers.

29. I consider that the Applicant's above broad categories encompass the Opponent's "anti-aging moisturizers used as cosmetics". They are therefore identical on the principle outlined in *Meric*.

Non-medicated skin serums; Anti-ageing serums for cosmetic purposes; Anti-aging serum for cosmetic use.

30. I consider that the Opponent's "beauty serums" would encompass the Applicant's above goods. They are therefore identical on the principle outlined in *Meric*.

Anti-wrinkle creams [for cosmetic use]; Anti-aging creams [for cosmetic use]; Anti-ageing creams [for cosmetic use]; Creams (Cosmetic -); Cosmetic creams; Facial creams [cosmetic]; Facial creams [for cosmetic use]; Cosmetic creams and lotions; Facial creams [cosmetics]; Anti-wrinkle creams; Anti-aging creams; Fluid creams [cosmetics]; Anti-ageing creams; Cosmetic creams for the skin; Skin creams [cosmetic]; Skin creams [for cosmetic use]; Cosmetic massage creams; Anti-wrinkle cream [for cosmetic use]; Facial creams; Cleansing creams [cosmetic]; Toning creams [cosmetic]; Hydrating creams for cosmetic use; Cosmetics in the form of creams; Sunscreen creams [for cosmetic use]; Non-medicated creams; Face creams for cosmetic use; Skin recovery creams [cosmetics].

31. The Applicant's above goods have a range of purposes, however, they are all creams intended for use on the skin of either the face, or body. In view of this, I consider that the Opponent's "body and facial creams [cosmetics]" would encompass the Applicant's above goods. They are therefore identical on the principle outlined in *Meric*.

Facial gels [cosmetics].

32. I consider that the Opponent's "beauty gels" would encompass the Applicant's above goods. They are therefore identical on the principle outlined in *Meric*.

Cosmetic facial lotions; Facial lotions [cosmetic].

33. The Applicant's above goods are all lotions intended to improve the appearance of the user's skin. I consider that the Opponent's "beauty lotions" would

encompass the Applicant's above goods. They are therefore identical on the principle outlined in *Meric*.

Anti-aging skincare preparations; Non-medicated skincare preparations;

34. I consider that the Opponent's "skin care cosmetics" would encompass the Applicant's above goods, which are all preparations for application to the skin. They are therefore identical on the principle outlined in *Meric*.

Dermatological creams [other than medicated].

35. I consider the Applicant's above goods overlap in nature, purpose and method of use with the Opponent's "body and facial creams [cosmetics]". I say this because the goods are all creams which are applied to the body to improve or maintain its condition or appearance. There is also an overlap in user, being members of the general public. The goods are likely to be sold within the same beauty retailers, where they are likely to be placed within close proximity to one another. As the goods are all creams for skin care, I also consider there to be a degree of competition, with the average consumer potentially choosing to purchase one product over another. Although the average consumer may expect the goods to be provided by the same undertaking, I do not consider them to be complementary in the way set out in caselaw. Overall, I consider the goods to be similar to a high degree.

Facial toners [cosmetic]; Collagen preparations for cosmetic application; Facial moisturisers [cosmetic]; Face powders [for cosmetic use]; Cosmetic face powders.

36. I consider that the Opponent's "cosmetics" would encompass the Applicant's above goods. They are therefore identical on the principle outlined in *Meric*.

Depilatory creams; Depilatory lotions.

37. The Applicant's above goods are creams and lotions which remove hair from the body. I consider that the Opponent's "body care cosmetics" is a broad category covering a range of body care products, including those for personal grooming such as hair removal. In view of this, I consider that the Applicant's depilatory creams and lotions are encompassed within the Opponent's "body care cosmetics". They are therefore identical on the principle outlined in *Meric*.

Cosmetic breast firming preparations; Cosmetic preparations for skin firming.

38. I understand the Applicant's above goods to be preparations placed externally on the body to enhance firmness of the skin. I consider that the Opponent's "body care cosmetics" and/or "skincare cosmetics" would encompass the Applicant's above goods. They are therefore identical on the principle outlined in *Meric*.

39. In the alternative, I consider the goods overlap in nature, method of use and purpose; all being preparations applied externally to the user's skin to improve its appearance. The user of the goods will overlap at a general level, being members of the general public seeking to improve the appearance of their skin, although the Applicant's goods do this more specifically through firming the skin. The goods are likely to be sold within the same beauty retailers, where they will likely be placed within close proximity to one another. There is a degree of competition, as a consumer seeking to improve the appearance of their skin may choose to purchase a more general body/skin cosmetic over one with specific firming qualities. While the average consumer would likely expect the same undertaking to be responsible for both general skin/body care cosmetics and preparations specifically for firming skin, I do not consider the goods to be complementary in the way set out in caselaw. Overall, if the goods are not *Meric* identical, I still consider them to be similar to a high degree.

Self-tanning preparations [cosmetic]; Self-tanning preparations [cosmetics]; Self tanning creams [cosmetic].

40. I understand the Applicant's above goods to be preparations which give the user the appearance of having a suntan, without exposure to the sun. I consider the

goods overlap in user with the Opponent's "cosmetics for suntanning", being members of the general public seeking to have a tanned appearance. There is a degree of overlap in purpose and method of use, as the goods at issue are all liquids/creams applied to the skin for the purpose of giving the skin a tanned appearance. However, they differ in nature as self-tanning creams/preparations give the appearance of a tan without sun exposure, while cosmetics for suntanning are applied to the skin during sun exposure to enhance or speed up the natural tanning process. The goods at issue are likely to be sold within the same beauty retailers, where they will be placed within close proximity to each other. There is a degree of competition, as an individual seeking to have a tanned appearance to their skin may choose to purchase a self-tanning product in place of a cosmetic which enhances the natural tanning process. While the average consumer may expect the goods to originate from the same undertaking, I do not consider that the goods are complementary in the way set out in caselaw. Overall, I consider the goods to be similar to between a medium and high degree.

Skin hydrators being injectable dermal fillers.

41. I understand the Applicant's above goods to be fillers which are injected into the skin for the purpose of hydration, to improve its appearance. I consider there is an overlap in purpose with the Opponent's "skin care cosmetics" in that the respective goods are used by members of the general public seeking to improve the appearance of the skin. However, the goods differ in nature and method of use, as skin care cosmetics incorporate creams, lotions and serums which are placed onto the skin, while dermal fillers are liquids injected directly into the skin. In the absence of any evidence before me, I do not consider it customary in trade for an undertaking responsible for skin care cosmetics to also provide injectable dermal fillers to hydrate the skin. The trade channels differ, as skin care cosmetics will be sold on the shelves of beauty retailers, while injectable dermal fillers will be sought from trained practitioners inside beauty parlours or aesthetic clinics. There is a degree of competition, as an individual seeking to improve the appearance of their skin may choose to get injectable dermal fillers in place of purchasing a skin care cosmetic with similar hydration benefits (although dermal fillers are considerably more invasive than external application of a skin care cosmetic). While the goods

at issue may be used alongside each other, I do not consider them to be complementary in the way set out in caselaw. Overall, I consider the goods to be similar to a low degree.

Average consumer and the purchasing act

42. As the case law above indicates, it is necessary to determine who the average consumer is for the goods at issue. I must then determine the manner in which the goods are likely to be selected by the average consumer.

43. 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.

44. 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.

45. The average consumer of the goods at issue will be members of the general public. Various factors are likely to be taken into consideration during the purchasing process, including the cost, ingredients, method of application and suitability for the consumer's needs (including any allergies). While I bear in mind that the goods are applied to, or injected into, the consumer's skin and may impact their appearance, and will therefore be of concern to consumers, I do not consider them to be at the highest end of the scale. Overall, I find that for most of the goods at issue a medium degree of attention is likely to be paid during the purchase. I consider that a medium-high degree of attention is likely to be paid during the purchase of *"skin hydrators being injectable dermal fillers"* due to the more invasive nature of the goods.

46. Most of the goods at issue will likely be self-selected from the shelves of retail outlets or their online equivalents. Given the process of selection the visual impact of the marks is likely to play the greater role, though I do not discount the opportunity for aural recommendations to be made, for example, by word-of-mouth or from a sales person, etc.

47. In respect of *"skin hydrators being injectable dermal fillers"*, the goods will likely be supplied by trained practitioners in beauty parlours or aesthetic clinics, who also provide the service of administering the injections. These goods are likely

to be selected from brochures or online material, or following discussions with the practitioner. Given the process of selection, I consider that both visual and aural considerations will play a role in the selection process.

Comparison of the marks

48. The respective trade marks pleaded under section 5(2)(b) are shown below:

Opponent's trade mark	Applicant's trade mark
pharmahealth	

49. The Opponent's mark consists of the word "pharmahealth" presented in a standard lowercase typeface. There are no other elements that contribute to the overall impression of the mark, which lies in the word itself.

50. I consider the word "pharma", in relation to class 3 cosmetic goods alludes to them having a formulation based in science (such as dermatological science). For example, cosmetics concerned with skin care or anti-aging may be marketed as having ingredients with a scientific or pharmaceutical basis (such as vitamins or certain acids) which enhance the appearance of the user. Similarly, I consider the word "health" in both marks alludes to the goods having health or wellbeing benefits. For example, a cosmetic product could be considered to have perceived health benefits, such as those including ingredients which improve the appearance or condition of the skin. Accordingly, both words are allusive, and therefore have a limited degree of distinctiveness for the goods at issue.

51. The Applicant's mark consists of the letters 'KP' presented within a device element, the words 'pharma HEALTH' and a smaller device element. The first device element is comprised of layered dark blue and teal triangular shapes with curved edges, placed askew from one another so that only the corners of the teal shape are visible. On top of the triangular shapes are the lowercase letters "kp"

presented in a white, lightly stylised, typeface. To the right of the figurative element is the word 'pharma' presented in lower case, in a dark blue typeface which is a similar size to the letters 'kp' in the device. Below the word 'pharma' is the word 'HEALTH' presented in smaller capital letters, in a teal typeface. To the right of the word 'HEALTH' is a small device element which is comprised of layered dark blue and teal triangular shapes with curved edges, placed askew from one another, with a small white '+' symbol in its centre. I consider that the plus symbol alludes to being related to medical goods and therefore reinforces the word 'health'.

52. Owing to its size and position, I consider that the letters 'kp' (with their background device element) play the greatest role in the overall impression of the mark. Bearing in mind, for the reasons set out in paragraph 50, that the words 'pharma health' are allusive to the goods at issue, I consider that these words play a secondary role in the overall impression. Although not negligible, I consider that the smaller device element plays a lesser role in the overall impression of the mark.
53. Visually, the 'kp' element in the Applicant's mark acts as a point of difference as it has no counterpart in the Opponent's mark. The marks coincide in the words 'pharma' and 'health' which appear in the same order in both marks, however, they are presented differently. In the Opponent's mark, the words are combined together to form one word ('pharmahealth') and presented in a standard typeface. In the Applicant's mark, the words 'pharma' and 'health' are presented separately (with one above the other) in different colours and sizes, with the word 'pharma' in lowercase, and the word 'health' in upper case. However, I bear in mind that notional and fair use of the Opponent's word mark means that its use of the word 'pharmahealth' would not be confined to any specific typeface and case.⁵ The triangular-shaped devices in the Applicant's mark act as a further point of difference. Overall, bearing in mind the size and position of the 'kp', the differences in presentation and the device elements, I consider that the marks are visually similar to between a low and medium degree.

⁵ *Bentley Motors Limited v Bentley 1962 Limited*, BL O/158/17

54. Aurally, the letters 'kp' (pronounced "kay-pee") at the beginning of the Applicant's mark, which have no counterpart in the Opponent's mark, act as a point of aural difference. The triangular shapes behind the letters 'kp' do not impact the way in which these letters will be pronounced. The words 'pharma' and 'health' will be pronounced in the ordinary way. I consider that the fact these words are conjoined in the Opponent's mark will not impact the pronunciation, and therefore this word element will be pronounced identically in both marks. The small '+' device in the Applicant's mark will not be articulated. Overall, although both marks contain an aurally identical element ('pharma health'/'pharmahealth'), bearing in mind that the point of aural difference ('kp') is at the beginning of the Applicant's mark, a position to which the average consumer tends to pay more attention, I consider the marks to be aurally similar to between a low and medium degree.
55. Conceptually, neither party has provided submissions regarding the conceptual nature of the marks. I consider that the 'kp' element conveys no specific conceptual message beyond being two letters of the alphabet. The triangular device behind these letters conveys no particular meaning.
56. Although the Opponent's mark 'pharmahealth' has no direct dictionary definition, I bear in mind that while the average consumer normally perceives a mark as a whole, they will nevertheless break it down into elements which resemble words which they recognise. In view of this, I consider that a significant proportion of average consumers will recognise the Opponent's 'pharmahealth' mark as being comprised of the words 'pharma' and 'health'. The word 'pharma' will likely be recognised as a shortening of the word 'pharmaceutical' or as relating to medicine or pharmacy. The word 'health' will likely be understood as referring to health, wellbeing, or the condition of the body. The concept of these words is shared in the Applicant's mark.
57. I consider that the smaller device, which includes a plus symbol, is reminiscent of a first aid cross, and therefore reinforces the word 'health' within the Applicant's mark, evoking the idea that the mark is related to health/wellbeing. The stylisation and colour elements present in the Applicant's mark do not create a conceptual

gap as they will not convey any particular meaning. Overall, I consider the marks are conceptually similar to a medium degree.

Distinctive character of the earlier trade mark

58. The distinctive character of a trade mark can be appraised only, first, by reference to the goods in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public – *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91. In *Lloyd Schuhfabrik*, 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).”

59. Registered trade marks possess varying degrees of inherent distinctive character, being lower where they are suggestive or allusive of a characteristic of the goods, to those with high inherent distinctive character, such as invented words which have no allusive qualities. Although the distinctiveness of a mark can be enhanced

by virtue of the use that has been made of it, the Opponent has not filed any evidence of use in relation to the earlier mark. Consequently, I have only the inherent position to consider.

60. The Opponent's mark consists of the conjoined words 'pharmahealth'. I consider that the average consumer will likely recognise the ordinary dictionary words 'pharma' and 'health' within the mark. As set out in paragraph 50, when considered as a whole I consider the words 'pharma health' will be perceived as allusive in relation to the goods at issue.
61. Accordingly, due to its allusive nature, I find the mark to be inherently distinctive to between a low and medium degree.

Likelihood of confusion

62. I must now feed all of my earlier findings into the global assessment of the likelihood of confusion, keeping in mind the following factors: i) the interdependency principle, whereby a lesser degree of similarity between the goods may be offset by a greater similarity between the marks, and vice versa (*Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*); ii) the principle that the more distinctive the earlier mark is, the greater the likelihood of confusion (*Sabel BV v Puma AG*), and; iii) the factor of imperfect recollection i.e. that consumers rarely have the opportunity to compare marks side by side but must rather rely on the imperfect picture that they have kept in their mind (*Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V.*).
63. There are two types of confusion that may occur. Direct confusion is where the average consumer mistakes one mark for the other, while indirect confusion is where the average consumer recognises that the marks are different, but for some reason assumes that the later mark also identifies the goods or services of the owner of the earlier mark, or that the two undertakings are related: see *L.A. Sugar Limited v Back Beat Inc*, BL O/375/10, paragraph 16.

Earlier in this decision, I found that:

- The parties' goods range from identical to similar to a low degree.
- The average consumer for the goods is the general public who will pay at least a medium degree of attention during the purchasing process. They will select the goods primarily by visual means, although I do not discount an aural component.
- The marks are visually and aurally similar to between a low and medium degree, and conceptually similar to a medium degree.
- The earlier mark is inherently distinctive to between a low and medium degree.

64. Taking all of the above into account and bearing in mind the principle of imperfect recollection, I do not consider that the marks will be mistakenly recalled or misremembered for one another. Although the marks share the word element 'pharmahealth'/'pharma health', I found these words to be allusive to the goods at issue. I consider the 'kp' element in the Applicant's mark will not be overlooked, especially in view of its position at the beginning of the mark, and the fact that I found it to play a distinctive role within the overall impression of the mark. Consequently, I consider there to be no likelihood of direct confusion between the marks, even for the goods that I have found to be identical.

65. That leaves indirect confusion to be considered. In *L.A. Sugar Limited v Back Beat Inc*, Case BL O/375/10, Mr Iain Purvis QC, (as he then was) sitting as the Appointed Person, explained that:

"16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: "The later mark is different from the

earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark.

17. 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).⁶

66. These three categories are not exhaustive; rather, they were intended to be illustrative of the general approach, as has been confirmed by the Court of Appeal. I recognise that a finding of indirect confusion should not be made merely because the competing marks share a common element. In this connection, it is not sufficient that a mark merely calls to mind another mark: this is mere association not indirect confusion.⁶

⁶ *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17

67. Furthermore, in *Liverpool Gin*,⁷ 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.
68. Having recognised the differences between the marks, I consider it unlikely that the average consumer will conclude that they originate from the same or economically linked undertakings. Although it is not a dictionary defined word, consumers will likely recognise that the mark consists of the ordinary dictionary words ‘pharma’ and ‘health’ conjoined. I do not consider the conjoined words ‘pharmahealth’ to be so strikingly distinctive that consumers would assume only one undertaking would use it in their mark. This is especially the case bearing in mind that I found the words ‘pharma’ and ‘health’ to both be allusive to the goods at issue. Further, I see no reason why the average consumer would see the use of the letters ‘kp’ at the beginning of the Applicant’s mark to be a logical indicator of a sub-brand or brand extension of the Opponent’s mark. On the contrary, I consider that the initial ‘kp’ element creates the impression of a different undertaking, rather than a variant of the earlier mark.
69. In view of the above, I consider that the average consumer would simply put the presence of the common element ‘pharmahealth’/‘pharma health’ in the marks down to coincidence rather than an economic connection between the undertakings. Consequently, I do not consider that there exists a likelihood of indirect confusion. I find this to be the case even where the goods are identical.

Conclusion

70. The opposition under section 5(2)(b) of the Act has failed. Subject to any successful appeal against my decision, the application will proceed to registration.

⁷ *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207

Costs

71. The Applicant has been successful and is entitled to a contribution towards its costs.

72. As the Applicant had not instructed professional representatives, it was invited by the Tribunal to indicate whether it intended to make a request for an award of costs, including accurate estimates of the number of hours spent on a range of given activities relating to defending the proceedings. On 27 February 2026 the Applicant submitted a pro-forma for the following award of costs:

Tribunal Cost Pro Forma	
Form types	Time spent in hours/minutes
Notice of Opposition	
Notice of Cancellation	
Notice of Defence	4 hours
Considering forms filed by the other party	2 hours
TOTAL	6 hours
Official fees for the above forms	
TOTAL	
Preparing evidence/written submissions and considering and commenting on the other side's evidence/written submissions	
Description of activity	Time spent in hours/minutes
TM8 Notice of defence and counterstatement	4 hours
TOTAL	4 hours
Preparing for a hearing	
Description of activity	Time spent in hours/minutes
TOTAL	
Other Expenses	
Description of activity	Time spent in hours/minutes
TOTAL	

73. With consideration of the above, I am guided in this decision by the scale of costs set out in Tribunal Practice Notice ("TPN") 1/2023, as well as the guidance on how costs should be allocated to unrepresented parties such as the Applicant.

74. First and foremost, I remind myself that the Tribunal awards costs on a contributory rather than a compensatory basis. It is important to note that only costs which have been incurred during, and as part of, these proceedings are relevant, such as filing official forms, evidence, written submissions etc.

75. I also take into account Mr Hobbs QC's (as he then was) comments in Amaro, O/257/18:

“17. [...] an award of costs is required to reflect the effort and expenditure to which it relates without inflation for the purpose of imposing a financial penalty by way of punishment on the paying party. The determination of a ‘reasonable’ amount to award must depend on the nature and circumstances of the case at hand.”

76. Accordingly, I have set out below my assessment on the Applicant's claim made. As outlined in TPN 1/2023, I will make the award of costs on the basis of £19 per hour, which is the minimum rate of compensation allowed under The Litigants in Person (Costs and Expenses) Act 1975 (as amended).

77. I award costs to the Applicant on the following basis:

Considering the notice of opposition, and filing a counterstatement: (6 hours):	£114
Total	£114

78. I therefore order HN MERCHANTS LIMITED to pay KP PHARMA HEALTH LTD the sum of £114. This sum should 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 1st day of July 2026

Emma Rees
For the Registrar

ANNEX

Class 3:

Skin hydrators being injectable dermal fillers; Anti-wrinkle creams [for cosmetic use]; Anti-aging creams [for cosmetic use]; Anti-ageing creams [for cosmetic use]; Dermatological creams [other than medicated]; Creams (Cosmetic -); Cosmetic creams; Facial creams [cosmetic]; Facial creams [for cosmetic use]; Cosmetic creams and lotions; Facial creams [cosmetics]; Anti-wrinkle creams; Anti-aging creams; Cosmetic products in the form of aerosols for skincare; Fluid creams [cosmetics]; Anti-ageing serums for cosmetic purposes; Anti-ageing creams; Anti-aging moisturizers used as cosmetics; Depilatory creams; Anti-aging skincare preparations; Cosmetic facial lotions; Facial lotions [cosmetic]; Cosmetic creams for the skin; Skin creams [cosmetic]; Skin creams [for cosmetic use]; Cosmetic massage creams; Anti-aging serum for cosmetic use; Anti-wrinkle cream [for cosmetic use]; Self-tanning preparations [cosmetic]; Facial toners [cosmetic]; Collagen preparations for cosmetic application; Facial creams; Facial moisturisers [cosmetic]; Non-medicated skin serums; Cosmetic breast firming preparations; Cleansing creams [cosmetic]; Toning creams [cosmetic]; Hydrating creams for cosmetic use; Cosmetic face powders; Face powders [for cosmetic use]; Non-medicated skincare preparations; Self tanning creams [cosmetic]; Anti-aging moisturizers; Cosmetics in the form of creams; Facial gels [cosmetics]; Sunscreen creams [for cosmetic use]; Self-tanning preparations [cosmetics]; Body and facial creams [cosmetics]; Non-medicated creams; Cosmetic preparations for skin firming; Cosmetic moisturisers; Hair care creams [for cosmetic use]; Depilatory lotions; Face creams for cosmetic use; Skin recovery creams [cosmetics]; Cosmetics and cosmetic preparations; Suncare lotions [for cosmetic use]; Cosmetic products in the form of aerosols for skin care.

Class 5:

Health food supplements for persons with special dietary requirements; Health food supplements made principally of vitamins; Health food supplements made principally of minerals; Dietary supplements for human beings; Vaccines for human use; Human coagulation factors; Dietary supplements for human beings and animals; Deodorants, other than for human beings or for animals; Human growth hormone; Medicines for human purposes; Human plasma protein; Human allograft tissue; Human immune

globulin; Trace elements (Preparations of -) for human and animal use; Preparations of trace elements for human and animal use; Antibiotics for human use; Human vaccine preparations; Medical diagnostic reagents and assays for testing of body fluids; Trace element preparations for human use; Pharmaceutical preparations for human use; Processed human donor skin for the replacement of soft tissue; Diagnostic strips for testing breast milk for medical purposes; Medical diagnostic test strips; Preparations of trace elements for human use; Reagents for use in diagnostic pregnancy tests; Biological indicators for monitoring sterilization processes for medical or veterinary purposes.

Class 9:

Health monitoring software.

Class 10:

Braces for application to the human body; Medical instruments for application in human bodies; Braces for the human body; Medical instruments for application on human bodies; Bandages for supporting the human body; Instruments for extracting human body fluids; Medical apparatus for introducing pharmaceutical preparations into the human body; Mechanical valves for implantation in human hearts; Animal sperm analyzers for laboratory use; Apparatus used in implementing diagnosis tests designed to detect the abnormal prion protein; Diagnostic test kits for the detection of haemoglobin in faeces; Medical apparatus for testing the level of glucose in the blood; Venous catheters for human use; Lung function test apparatus for medical use; Medical and surgical cutters for cutting human or animal tissue and organs; Diagnostic apparatus for pregnancy testing; Probes for use with integrated circuits \[for medical diagnosis]; Medical and surgical knives for cutting human or animal tissue and organs; Diagnostic apparatus for the detection of abnormal prion protein; Medical diagnostic apparatus for testing for viruses; Automated analyzers for body fluids \[for medical use]; Automated analyzers for foreign matter contained in body fluids \[for medical use]; Apparatus for blood tests \[for medical use]; Testing probes for medical diagnostic purposes.

Class 44:

Analysis of human tissues for medical treatment; Analysis of human serum for medical treatment; Hygienic care for human beings; Medical services for the diagnosis of conditions of the human body; Beauty care for human beings; Hygienic and beauty care for human beings; Human tissue bank services; Medical services for the treatment of conditions of the human body; Cosmetic skin tanning services for human beings; Collection and preservation of human blood; Human sperm donation services; Human fertility treatment services; Human healthcare services; Airbrush tanning services for the human body; Human hygiene and beauty care; Body waxing services for the human body; Medical services relating to the removal, treatment and processing of human blood; Medical services relating to the removal, treatment and processing of human cells; Genetic testing of animals for diagnostic or treatment purposes; Rental of equipment for human healthcare; Animal performance testing services; Rental of equipment for human hygiene and beauty care.