

o/0679/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK4182252

BY GEMMA LAU

TO REGISTER THE TRADE MARK:

REVIVE

IN CLASS 5

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 600003738

BY REVIVE NATURALS LLC

Background and pleadings

1. On 1 April 2025, Gemma Lau (“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 20 June 2025. The goods applied for are as follows:

Class 5: Restorative food and nutritional supplements; food supplements; dietary supplements; protein supplements; nutritional supplements; vitamin supplements; nutritional supplements to rejuvenate and revive; health food supplements made principally of vitamins; health supplements; nutritional supplements to increase energy and reduce fatigue and stress; preparations for supplementing the body with essential vitamins and microelements; vitamin supplements to improve health; vitamin and nutritional supplements to improve activity levels; nutritional supplements to improve strength.

2. The application was opposed by Revive Naturals LLC (“the opponent”) on 21 July 2025. The opposition is based upon section 5(2)(b) of the Trade Marks Act 1994 (“the Act”) and is against all of the applied for goods.

3. The opponent relies on the following trade mark:

UK4066188

Revive Naturals

Filing date: 20 June 2024

Registration date: 18 October 2024

Relying upon all of the goods for which the earlier mark is protected, namely:

Class 5: Protein synthesis inhibitors; Protein supplements; Synthetic peptides for pharmaceutical purposes; Protein supplements for animals; Protein powder dietary supplements; Protein dietary supplements; Whey protein dietary supplements; Soy protein dietary supplements; Albumin dietary supplements;

RNA synthesis inhibitors; DNA synthesis inhibitors; Enzyme dietary supplements; Food supplements consisting of amino acids; Collagen for medical purposes; Vitamin supplements; Vitamins and vitamin preparations; Vitamin and mineral supplements; Vitamin tablets; Liquid vitamin supplements; Vitamin and mineral food supplements; Vitamin supplement patches; Vitamin supplements for animals; Vitamin C preparations; Mixed vitamin preparations; Dietary supplements consisting of vitamins; Multivitamins; Mineral dietary supplements; Preparations of vitamins; Mineral nutritional supplements; Preparations for supplementing the body with essential vitamins and microelements; Mineral dietary supplements for humans; Vitamins for animals; Dietary and nutritional supplements; Dietary supplements; Mineral dietary supplements for animals; Nutritional supplements; Multivitamin preparations; Health food supplements made principally of vitamins; Multi-vitamin preparations; Dietary food supplements; Cod-liver oil capsules; Dietary supplements in powder form; Dietary supplements for animals; Dietary supplements and dietetic preparations.

4. The opponent claims that the marks are highly similar and that the goods are identical so there exists a likelihood of confusion.

5. The applicant filed a counterstatement denying the claims made. They do admit that some of the goods are identical however, others are similar only to a low degree or are dissimilar.

6. This is an opposition to which the Trade Marks (Fast Track Opposition) (Amendment) Rules 2013, S.I. 2013 No. 2235 apply, Rule 6 of those rules disapplies paragraphs 1 to 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.”

7. Other than proof of use evidence, the fast track opposition procedure does not include the routine filing of evidence. The net effect of the above rules is to require the

parties to seek leave in order to file evidence in fast track oppositions. The applicant sought leave to file evidence; however, this was refused. The applicant did not request to be heard on the point.

8. Rule 62(5) of the Fast Track Opposition Rules (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. A hearing was neither requested nor considered necessary. This decision is taken following a careful consideration of the papers.

9. The applicant is represented by Brandsmiths SL Limited and the opponent is represented by Nicholas & Co Solicitors.

10. 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

Section 5(2)(b)

11. Section 5(2)(b) of the Act is 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”.

Section 5(2)(b) caselaw

12. 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:

The principles

(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

13. In comparing the respective specifications, all relevant factors should be considered, as per *Canon*, where the CJEU stated at paragraph 23 of its judgment:

“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.”

14. 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.

15. Further, in *Kurt Hesse v OHIM*,¹ the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v OHIM*,² the General Court stated that “complementary” means:

“...there is 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

¹ Case C-50/15 P

² Case T-325/06

may think that the responsibility for those goods lies with the same undertaking.”

16. I bear in mind that it is permissible to group goods together for the purposes of assessment: *Separode Trade Mark*:³

“The determination must be made with reference to each of the different species of goods listed in the opposed application for registration; if and to the extent that the list includes goods which are sufficiently comparable to be assessable for registration in essentially the same way for essentially the same reasons, the decision taker may address them collectively in his or her decision.”

17. The goods to be compared are shown in the table below:

Contested goods	Earlier goods
Class 5: Restorative food and nutritional supplements; food supplements; dietary supplements; protein supplements; nutritional supplements; vitamin supplements; nutritional supplements to rejuvenate and revive; health food supplements made principally of vitamins; health supplements; nutritional supplements to increase energy and reduce fatigue and stress; preparations for supplementing the body with essential vitamins and microelements; vitamin supplements to improve health; vitamin and nutritional supplements to improve activity levels; nutritional supplements to improve strength.	Class 5: Protein synthesis inhibitors; Protein supplements; Synthetic peptides for pharmaceutical purposes; Protein supplements for animals; Protein powder dietary supplements; Protein dietary supplements; Whey protein dietary supplements; Soy protein dietary supplements; Albumin dietary supplements; RNA synthesis inhibitors; DNA synthesis inhibitors; Enzyme dietary supplements; Food supplements consisting of amino acids; Collagen for medical purposes; Vitamin supplements; Vitamins and vitamin preparations; Vitamin and mineral supplements; Vitamin tablets; Liquid vitamin

³ BL O/399/10

	supplements; Vitamin and mineral food supplements; Vitamin supplement patches; Vitamin supplements for animals; Vitamin C preparations; Mixed vitamin preparations; Dietary supplements consisting of vitamins; Multivitamins; Mineral dietary supplements; Preparations of vitamins; Mineral nutritional supplements; Preparations for supplementing the body with essential vitamins and microelements; Mineral dietary supplements for humans; Vitamins for animals; Dietary and nutritional supplements; Dietary supplements; Mineral dietary supplements for animals; Nutritional supplements; Multivitamin preparations; Health food supplements made principally of vitamins; Multi- vitamin preparations; Dietary food supplements; Cod-liver oil capsules; Dietary supplements in powder form; Dietary supplements for animals; Dietary supplements and dietetic preparations.
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18. I note within the Form TM8 and counterstatement that the applicant states the following:

“It is denied that all of the goods of the Application and those of the Earlier Mark are identical. It is admitted that some of the goods covered by the Application are identical to the goods covered by the Earlier Mark, however other goods covered by the Application are similar to a low degree or are dissimilar to the goods covered by the Earlier Mark.”

19. As the applicant has not specified which level of identity/similarity/dissimilarity applies to which good, I must still undertake a full comparison.

20. The following terms are found identically in both specifications: *Dietary supplements; protein supplements; nutritional supplements; vitamin supplements; health food supplements made principally of vitamins; preparations for supplementing the body with essential vitamins and microelements.*

Restorative food and nutritional supplements;

21. I consider that 'dietary supplements' and 'food supplements' are essentially one and the same and therefore, I find that the above term from the applicant's specification falls within 'dietary and nutritional supplements' from the opponent's specification and they are therefore identical under the principle set out in *Meric*. If I am wrong in this finding however, I still consider there to be an overlap in user, nature, purpose and trade channel. Although they are not complementary, they could be in competition and therefore, I find them to be similar to a high degree.

Food supplements;

22. Again, I consider that 'dietary supplements' and 'food supplements' are essentially one and the same and therefore, I find that the above term from the applicant's specification is identical to 'dietary supplements' from the opponent's specification. If I am wrong in this finding however, I still consider there to be an overlap in user, nature, purpose and trade channel. Although they are not complementary, they could be in competition and therefore, I find them to be similar to a high degree.

Nutritional supplements to rejuvenate and revive; nutritional supplements to increase energy and reduce fatigue and stress; nutritional supplements to improve strength

23. I consider that the above terms fall within the opponent's 'nutritional supplements' and, therefore, I find these goods to be identical under the principle set out in *Meric*.

Health supplements;

24. I consider that the term ‘health supplements’ encompasses things such as ‘dietary supplements’, ‘nutritional supplements’ and ‘vitamin and mineral supplements’, all of which are found in the opponent’s specification and therefore, are identical under the *Meric* principle.

Vitamin supplements to improve health;

25. I consider that this term falls within the opponent’s ‘vitamin supplements’ and therefore, they are identical as per the *Meric* principle.

Vitamin and nutritional supplements to improve activity levels;

26. The goods “vitamin and nutritional supplements to improve activity levels” are identical under the *Meric* principle to “dietary and nutritional supplements” on the basis that the latter is a broad term which encompasses vitamin and nutritional supplements, including those marketed or formulated for improving activity levels. If they are not identical, they are highly similar, sharing the same nature, purpose, users, method of use and trade channels.

Average consumer and the purchasing act

27. 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.

28. 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.

29. The relevant goods are directed at the public at large; however, I do not discount healthcare 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/dietary 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.

30. 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

31. 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.”

32. 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.

33. The respective trade marks are shown as follows:

Contested mark	Earlier mark
REVIVE	REVIVE NATURALS

34. The contested mark is a word mark consisting of one word and, therefore, that is where the overall impression lies.

35. The earlier mark comprises of two words, 'REVIVE' and 'NATURALS'. I consider that the 'revive' element will be the dominant and distinctive component, even though it is allusive of the benefits/purpose of the goods it is applied for, and I believe that 'naturals' is less distinctive as it is likely descriptive/allusive of the nature of the goods themselves.

36. Visually, both marks coincide with the word 'REVIVE'. The earlier mark contains the word 'naturals' at the end which has no counterpart in the contested mark. Therefore, I find the marks to be visually similar to a medium degree.

37. Aurally, the 'REVIVE' element will be given its ordinary everyday pronunciation identically across both marks. The earlier mark has 'NATURALS' (which will also be given its ordinary everyday pronunciation) that has no counterpart in the contested mark. I therefore find the marks to be aurally similar to a medium degree.

38. Conceptually, I consider that the term 'REVIVE' will carry the same meaning across both marks. The inclusion of 'NATURALS' in the earlier mark serves as a point of difference conceptually. I therefore consider that the marks are conceptually similar to a medium degree.

Distinctive Character of the Earlier Mark

39. 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).”

40. 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.

41. I consider that the word ‘Revive’, when used in relation to the registered goods, is allusive of the effect those goods may have on the consumer. In particular, it suggests that the health supplements may make a person feel better or re-energised.

42. The word ‘Naturals’ is descriptive of goods that are made from, or contain, natural ingredients.

43. Taking the earlier mark as a whole, I find that it has a low degree of inherent distinctive character.

Likelihood of Confusion

44. 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.

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

- I have found the marks to be visually, aurally and conceptually similar to a medium degree.
- The contested mark is a word mark comprising a single word 'REVIVE' and therefore, that is where the overall impression lies.
- The earlier mark comprises two words, with 'REVIVE' being the distinctive and dominant component and 'NATURALS' playing a lesser role.
- 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 low degree.

46. Due to the identical (or highly similar goods), together with the level of visual and aural similarities, in particular, the shared dominant and distinctive components, I find that the average consumer may not recall that the earlier mark contains the descriptive term ‘Naturals’ at the end.⁴ Even though the earlier mark has a low level of distinctiveness, this does not preclude me from making a finding of a likelihood of confusion.⁵ I believe the average consumer will likely mistake one mark for the other. Consequently, I find there to be a likelihood of direct confusion between the marks.

47. In the event that I am wrong in finding there to be a likelihood of direct confusion, I will now go on to consider whether there could be indirect confusion. Mr Iain Purvis Q.C. 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).”

⁴ Particularly as beginnings of marks tend to have more impact than the end, *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

⁵ *L’Oréal SA v OHIM*, Case C-235/05 P, paragraph 45

48. 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.”⁶

49. In a case of indirect confusion, the average consumer notices the differences between the marks but nevertheless assumes that they are linked. In this case, the difference that might be noticed by the average consumer is the inclusion of ‘NATURALS’ at the end of the earlier mark. As I have already found above, this term is descriptive (or at least highly allusive) of the goods registered and is placed at the end of the mark. Therefore, I believe that the average consumer may regard the presence or absence of ‘NATURALS’ as indicating a variant or brand extension within the same undertaking, particularly given the descriptive/allusive nature of that word in relation to supplements. I therefore find that there is a likelihood of indirect confusion.

Conclusion

50. The opposition has succeeded and registration is refused, subject to any successful appeal.

Costs

51. The opponent has been successful and is entitled to a contribution towards its costs. Awards of costs are governed by Annex A of Tribunal Practice Notice (“TPN”) 1/2023. In accordance with that TPN, I award the opponent the sum of **£450**, calculated as follows:

Official fee

£100

⁶ Paragraph 12

Preparing the Notice of Opposition and	£250
Considering the counterstatement	

Preparing submissions in lieu	£100
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52. I order Gemma Lau to pay Revive Naturals LLC the sum of £450. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 29th day of July 2026

L Nicholas
For the Registrar