

O/0746/26

TRADE MARKS ACT 1994

**IN THE MATTER OF
TRADE MARK APPLICATION NO. 4146556
IN THE NAME OF KRAK LIFE LTD
TO REGISTER AS A TRADE MARK**

KRAK

IN CLASSES 5 & 30

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 452998
BY GENUPORT TRADE GMBH**

BACKGROUND AND PLEADINGS

1. On 11 January 2025, KRAK LIFE LTD (“the applicant”) applied to register the trade mark shown on the cover page of this decision in the United Kingdom. The application was accepted and published for opposition purposes on 24 January 2025, in respect of goods in classes 5 and 30, as listed in the table under paragraph 18 of this decision.¹

2. The application is opposed by Genuport Trade GmbH (“the opponent”). The opposition was filed on 12 March 2025 and is based upon section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opposition is directed against all of the goods in the application.² The opponent relies upon its UK designation of the following International Registration (“IR”):

CRÄX

International Registration No.: WO1621922

International Registration date: 23 September 2021

UK Date of Designation: 23 September 2021

Date protection conferred in the UK: 4 February 2022

Protected for goods in class 30

Relying on all goods, as listed in the table under paragraph 18 of this decision.

3. The above mark qualifies as an earlier mark under section 6(1) of the Act. As it had not been protected for more than five years at the date the application was filed, it is not subject to the use provisions contained in section 6A of the Act.

4. The opponent submits that the marks are highly similar and that the application is to be registered for goods identical with or similar to those for which the earlier mark is protected, such that there exists a likelihood of confusion on the part of the public,

¹ A Form TM21B was filed by the applicant on 2 June 2025 in which a restriction to the class 5 and class 30 specifications of the application was requested, and subsequently accepted. Following the recordal of the amended specifications, the opponent was requested to confirm whether the amendment would allow the opposition to be withdrawn. However, the opposition was not withdrawn and proceedings continue against the applicant’s mark in relation to the amended specifications in each class.

² As amended, per the previous footnote.

which includes a likelihood of association with the earlier mark. The opponent requests an award of costs in its favour.

5. The applicant filed a counterstatement denying the claims. As well as denying that the marks are highly similar, the applicant made reference to the requested restriction of its class 5 and class 30 goods, (filed at the same time as the form TM8 and counterstatement), submitting that the resulting amendments meant that there was no similarity between the goods at issue.

6. Both parties filed evidence and the applicant also filed written submissions during the evidence rounds. Neither party requested a hearing, both parties filed written submissions in lieu of a hearing. This decision is taken following careful consideration of the papers on file.

7. In these proceedings, the opponent is represented by Wilson Gunn and the applicant is not professionally represented.

EVIDENCE AND SUBMISSIONS

The Opponent's evidence

8. The opponent filed evidence in support of the opposition in the form of the witness statement of Dr. Uwe Johann Ludwig Lebens dated 28 July 2025, which is accompanied by 14 exhibits. Dr. Lebens is a Director of the opponent, a position he has held since 2 May 2017.

9. The purpose of the evidence is stated as being to show “that it is commonplace within the relevant industry for companies operating in the snacks or supplements sector to offer both (i) functional goods being goods with added supplements and minerals, and (ii) conventional bakery products, under the same brand name”.³

³ At point 3 of the witness statement.

10. The opponent also filed written submissions in lieu of a hearing, dated 17 February 2026.

The Applicant's evidence

11. The applicant filed evidence in reply to the opponent's evidence, in the form of the witness statement of Dr Qasim Masood, dated 30 September 2025. The witness statement is accompanied by 43 exhibits. Dr Masood is a Director of the applicant.

12. The applicant also filed written submissions on the same date, as well as written submissions in lieu of a hearing, dated 17 February 2026.

13. I have taken the evidence and submissions into account in reaching my decision and I will refer to them during the decision to the extent I consider necessary.

DECISION

14. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

Section 5(2)(b)

15. Section 5(2)(b) is relied on and 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”.

16. Section 5A states:

“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.”

17. 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, in certain circumstances, be dominated by one or more of its components;

(f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite 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 greater 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 to mind the earlier mark, 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; and

(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

18. The goods to be compared are:

Opponent's goods
<u>Class 30</u> <i>Bakery products.</i>
Applicant's goods
<u>Class 5</u> <i>Nutritional supplements; Food supplements; Dietary supplements; Vitamin Supplements; Herbal supplements; Mineral supplements; Herbal medicine; Liquid dietary supplements; Liquid vitamin supplements; Liquid nutritional supplements; Liquid herbal supplements; Dietary supplement drink mixes; Probiotic supplements; Multivitamins; Medicinal herb extracts; Medicinal oils.</i>
<u>Class 30</u> <i>Tea beverages; Coffee beverages; Chocolate beverages; Cocoa beverages; Herbal teas; Green tea; Chai tea; Iced teas; Iced coffee; Coffee; Instant tea; Instant coffee; Mixes in the nature of powders used in the preparation of beverages containing a blend of dried mushrooms, cacao, spices and tea.</i>

19. Pursuant to section 60A of the Act, goods are not to be automatically regarded as being similar to each other on the ground that they appear in the same class, nor automatically regarded as dissimilar from each other on the ground that they appear in different classes.

20. In *Canon*, Case C-39/97, the Court of Justice of the European Union (“CJEU”) stated that:

“23. In assessing the similarity of the goods or services concerned, ... 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”.

21. Additionally, the factors for assessing similarity between goods and/or services identified in *British Sugar Plc v James Robertson & Sons Limited* (“*Treat*”) [1996]

R.P.C. 281 include an assessment of the users and the channels of trade of the respective goods/services.

22. 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. In *Boston Scientific Ltd v OHIM*, Case T-325/06, the General Court (“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”.

23. For the purposes of considering the issue of similarity of the goods and/or services, it is permissible to consider groups of terms collectively where appropriate: *Separode Trade Mark*, BL O-399-10.⁴

24. As mentioned earlier in this decision, and as referred to in the opponent’s written submissions in lieu of a hearing, the opponent submits that many health-conscious brands offer both baking products and dietary supplements, which it submits is a fact that the average consumer is aware of,⁵ and that the class 5 goods of the application have very broad terms such as nutritional and food supplements, both of which can be baked goods.⁶ It further submits that the amended class 30 goods of the application are similar to the class 30 goods of the registration to the extent that bakery products are often enjoyed alongside warm beverages and teas.⁷

25. In the applicant’s written submissions in lieu of a hearing, it submits that when considering the goods with respect to nature, intended purpose, method of use, distribution channels, and whether they are in competition or complementary, that the goods are not similar, and it proceeds to explain why it considers that to be the case.

⁴ Paragraph 5

⁵ At point 23 of the written submissions in lieu.

⁶ At point 21.

⁷ At point 24.

26. The applicant also submits that the opponent's argument that "many health-conscious brands offer both baking products and dietary supplements" is irrelevant to the similarity assessment, and the fact that some companies choose to sell diverse product portfolios under a single house brand does not make those products themselves similar for trade mark purposes.⁸

27. I agree that just because an undertaking offers a variety of products under the same brand name does not automatically mean that those goods share a level of similarity. Although the Nice Classification is purely administrative,⁹ I also note that in *Altecnic Ltd's Trade Mark Application*, the Court of Appeal ("COA") decided that "the registrar is entitled to treat the class number in the application as relevant to the interpretation of the scope of the application."¹⁰ I will proceed to make a full comparison on the degree of similarity, or otherwise, between the contested goods and those registered under the earlier mark.

The contested goods in class 5

Nutritional supplements; Food supplements; Dietary supplements; Vitamin Supplements; Herbal supplements; Mineral supplements; Liquid dietary supplements; Liquid vitamin supplements; Liquid nutritional supplements; Liquid herbal supplements; Dietary supplement drink mixes; Probiotic supplements; Multivitamins.

28. The above-listed goods are all qualified as being supplements, the final term "*Multivitamins*" notwithstanding. I consider the average consumer would construe these types of supplements as being something taken to augment their diet to fulfil particular nutritional needs. Some of the above supplements are described as being in liquid form, while those that are not qualified as such may be offered as, for example, tablets, capsules, powders or gummies. Regardless of their physical form, the intended purpose of addressing a deficiency in the consumer's diet is the same.

⁸ At point 16 of the applicant's written submissions in lieu.

⁹ See *Mould Pro* decision Case T-794/21 at [22-28].

¹⁰ *Altecnic Ltd's Trade Mark Application* [2002] RPC 34 (COA) at [42].

Meanwhile, the opponent's "*Bakery products*" in class 30 encompass a wide range of goods such as, inter alia, bread, cakes and pastries. These type of goods may be considered a staple part of the consumer's diet, or they may be eaten for pleasure. While there is an overlap in method of use, i.e. oral consumption, and there will be an overlap in users of the distinct goods, I consider this to be at a superficial level. The opposing goods may also share channels of trade, such as supermarkets, however, they are unlikely to be situated in close proximity to each other and I would expect them to be found in different areas within a physical store. I note the opponent's contention that bakery products and dietary supplements can be used together in food preparation and can be added directly into the likes of cake and bread mixes to create fortified baked goods. However, that does not make the goods similar in nature: *Les Éditions Albert René v OHIM*, Case T-336/03.¹¹ I do not consider the goods at issue to be either in competition, or complementary as per the definition outlined earlier in *Boston Scientific*. While it is possible that the same undertaking would provide the component parts and the finished article, I do not consider that the average consumer would automatically expect this to be the case for baking products which may contain any of the applicant's various supplements. Overall, I consider the competing goods to be dissimilar.

Herbal medicine; Medicinal herb extracts; Medicinal oils.

29. The above goods are medicinal in nature. For the same reasons given above in paragraph 28, I consider the applicant's goods to be dissimilar to the opponent's "*Bakery products*" in class 30.

The contested goods in class 30

Tea beverages; Coffee beverages; Chocolate beverages; Cocoa beverages; Herbal teas; Green tea; Chai tea; Iced teas; Iced coffee; Coffee; Instant tea; Instant coffee; Mixes in the nature of powders used in the preparation of beverages containing a blend of dried mushrooms, cacao, spices and tea.

¹¹ At [61].

30. The applicant's goods in class 30 are all beverages or are used in the preparation of beverages. I construe the opponent's goods in class 30 are "*Bakery products*" as finished products such as, amongst others, bread, cakes and pastries. Although there will be an overlap in users, and an overlap in nature and method of use, in as much that they are all consumed orally, pragmatically, this is insufficient for a finding of similarity. While beverages and pastries may well be consumed together, that does not make them indispensable to each other and I do not consider them to be complementary in a trade mark sense. There will be an overlap in trade channels, and although they are likely to be found in different aisles in a supermarket, I acknowledge that they may be found in close proximity in the likes of a café or tea shop. However, even then, I do not consider that the average consumer would immediately perceive the goods as originating from the same provider. In *Unicorn Studio Inc v Veronese* Case CH-2023-000214, Iain Purvis, KC, sitting as deputy High Court judge, stated that any finding of similarity requires the exercise of common sense.¹² Taking a realistic approach to the comparison of these particular goods, I find them to be dissimilar.

31. For the avoidance of doubt, when making my assessment, I have taken into consideration the evidence provided by the opponent. The majority of the exhibits seem to show goods which are considered to be naturally healthy through their inherent natural ingredients such as oats, nuts and seeds. I note that there is some evidence to show that some providers offer both supplements and the likes of non-dairy drinks or protein bars under the same trade mark. However, for the reasons given in the above side-by-side assessment of the goods at issue, it does not persuade me that the opposing goods would be perceived by the average consumer as being similar such that the consumer would automatically expect those goods to originate from the same, or economically-related, undertakings.

32. Under section 5(2)(b), a degree of similarity between the goods is essential for there to be a finding of likelihood of confusion: see paragraph 49 of *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA. As I have found all of the contested

¹² At [24].

goods to be dissimilar to those of the opponent, there can be no likelihood of confusion under section 5(2)(b).

CONCLUSION

33. The net effect of my findings is that the opposition under section 5(2)(b) fails at the first hurdle in that any level of similarity between the goods at issue has not been established.

34. Subject to any successful appeal, the application by KRAK LIFE LTD may proceed to registration in respect of all of its goods.

COSTS

35. The applicant has been successful, and is therefore entitled to a contribution towards its costs. The applicant is a litigant in person and I note the completed proforma detailing the time spent on particular activities associated with its defence of this opposition. In relation to the hours spent on these proceedings, at the time the opposition was launched in March 2025, The Litigants in Person (Costs and Expenses) Act 1975 (as amended) set the minimum level of compensation for litigants in person in Court proceedings at £19.00 an hour.

36. On the proforma, the applicant submits that it has spent a total of 42 hours on its defence, which to my mind seems excessive. As outlined in Tribunal Practice Notice 1/2023, costs in these proceedings are intended to be contributory rather than compensatory. I also note that many of the exhibits adduced in evidence concern the different packaging used on the parties' distinct products, or include printouts taken from non-UK sources, neither of which had any bearing on my assessment. As such, I make no award for that evidence. Taking all of this into account, I consider the following to be reasonable:

Considering the opposition filed by the opponent	2 hours
Preparing and filing a Counterstatement	3 hours
Preparing and filing written submissions,	

and written submissions in lieu of a hearing

15 hours

Total

20 hours

37. I therefore order Genuport Trade GmbH to pay KRAK LIFE LTD the sum of £380. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 18th day of August 2026

Suzanne Hitchings

**For the Registrar,
the Comptroller-General**