

O/0832/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. 4221181

BY LIN XU

TO REGISTER:

Leefar

AS A TRADE MARK IN CLASS 5

AND

IN THE MATTER OF THE OPPOSITION THERETO

UNDER NO. 456746 BY

RISING STARLIGHT LLC

BACKGROUND AND PLEADINGS

1. On 19 June 2025, Lin Xu (“the applicant”) applied to register **Leefar** as a trade mark in the United Kingdom in respect of the following goods:

Class 5

Anti-oxidant supplements; Nutritional supplements; Dietary supplements for humans; Dietary supplements promoting fitness and endurance; Vitamin and mineral supplements; Vitamin supplements; Mineral dietary supplements for humans; Nutraceuticals for use as a dietary supplement; Dietary supplements and dietetic preparations; Dietary supplements for human beings; Herbal supplements; Dietary supplements with a cosmetic effect; Dietary and nutritional supplements; Dietary supplements.

2. The application was published for opposition purposes on 4 July 2025.

3. On 16 September 2025, the application was opposed by Rising Starlight LLC (“the opponent”). The opposition is based on section 5(4)(a) of the Trade Marks Act 1994 (“the Act”) and concerns all the goods in respect of which registration is sought.

4. Under section 5(4)(a), the opponent claims to have used the sign **Leefar** throughout the UK since 2022 for the same goods as in the application. The opponent claims to have acquired goodwill under the sign. According to the opponent, use of the contested marks would constitute a misrepresentation to the public that would damage the goodwill in its business. Consequently, use of the contested marks would be contrary to the law of passing off.

5. The applicant filed a defence and counterstatement denying the claims made. They argued that they had conceived of, and adopted, the mark independently and in good faith.

6. Only the opponent filed evidence. This comes from Stephanie Andujar, the director of Rising Starlight LLC. Her witness statement is dated 3 December 2025 and is simply a vehicle for introducing six exhibits. I shall refer to these in due course.

7. Neither party filed written submissions or requested a hearing.

8. In these proceedings, the opponent is represented by Axis Professionals Ltd and the applicant by ENGVAT Limited.

DECISION

9. Section 5(4)(a) of the Act states that:

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

(a) by virtue of any rule or law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, where the condition in subsection 4(A) is met

...”

10. Subsection 4(A) is as follows:

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

11. In *Reckitt & Colman Products Limited v Borden Inc. & Ors* [1990] RPC 341, HL, Lord Oliver of Aylmerton described the “classical trinity” that must be proved in order to reach a finding of passing off at [406]:

“First, he must establish a goodwill or reputation attached to the goods or services which he supplies in the mind of the purchasing public by association with the identifying ‘get-up’ (whether it consists simply of a brand name or a trade description, or the individual features of labelling or packaging) under which his particular goods or services are offered to the public, such that the get-up is recognised by the public as distinctive specifically of the plaintiff’s goods or services. Secondly, he must demonstrate a misrepresentation by the defendant to the public (whether or not intentional) leading or likely to lead the public to believe that the goods or services offered by him are the goods or services of the plaintiff. Thirdly,

he must demonstrate that he suffers or, in a quia timet action, that he is likely to suffer damage by reason of the erroneous belief engendered by the defendant's misrepresentation that the source of the defendant's goods or services is the same as the source of those offered by the plaintiff."

Relevant Date

12. In *Maier & Anor v ASOS plc & Anor* [2015] EWCA Civ 220, Kitchin LJ (as he then was) said:

"165. ... Under the English law of passing off, the relevant date for determining whether a claimant has established the necessary reputation or goodwill is the date of the commencement of the conduct complained of (see, for example, *Cadbury-Schweppes Pty Ltd v The Pub Squash Co Ltd* [1981] RPC 429). The jurisprudence of the General Court and that of OHIM is not entirely clear as to how this should be taken into consideration under Article 8(4) (compare, for example, T-114/07 and T-115/07 *Last Minute Network Ltd* and Case R 784/2010-2 *Sun Capital Partners Inc*). In my judgment the matter should be addressed in the following way. The party opposing the application or the registration must show that, as at the date of application (or the priority date, if earlier), a normal and fair use of the [contested] trade mark would have amounted to passing off. But if the [contested] trade mark has in fact been used from an earlier date then that is a matter which must be taken into account, for the opponent must show that he had the necessary goodwill and reputation to render that use actionable on the date that it began."

13. In their counter-statement, the applicant says that "*The goods are marketed independently, through distinct trade channels, and to different consumer segments. There is no evidence that the Applicant's activities have diverted trade, tarnished reputation, or otherwise harmed the Opponent's alleged goodwill.*" While this may appear to suggest that the applicant has used the contested mark before the application date, no specific details or times have been given. Consequently, I have no reason to find that there is another relevant date, beyond the application date of 19 June 2025.

Goodwill

14. The concept of goodwill was considered by the House of Lords in *Inland Revenue Commissioners v Muller & Co's Margarine Ltd* [1901] AC 217 at [224]:

“What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantages of the good name, reputation and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start. The goodwill of a business must emanate from a particular centre or source. However widely extended or diffused its influence may be, goodwill is worth nothing unless it has the power of attraction sufficient to bring customers home to the source from which it emanates.”

The opponent's evidence

15. I have already said that the opponent's evidence consists of six exhibits. Exhibit 1 contains extracts from the website www.leefar.shop. They show images of products bearing the sign “LeeFar” and text referring to “leefar”. However, the webpages are undated, except for the date on which they were captured, which was 3 December 2025.

16. Exhibit 2 contains photographs of products that Ms Andujar states are available in the United Kingdom. These are also undated.

17. Exhibit 3 contains records of some sales made to customers in the United Kingdom. These are summarised in the table below:

Date	Location	Product	Price (USD) ¹
15/10/2022	West Yorkshire	Probiotic+Slippery Elm	25.99
04/11/2022	Barnsley	Probiotic+Slippery Elm	25.99
26/02/2023	Lancaster	Probiotic+Slippery Elm	25.99
30/09/2023	Hopton-on-Sea	Probiotic+Slippery Elm	25.99

¹ I have not included shipping costs.

18. Ms Andujar states that Exhibit 4 contains “*documents showing the Opponent’s participation in offline exhibitions, demonstrating the public display and promotion of the Leefar products*”. These documents are four undated photographs. I cannot see where or when any exhibition took place.

19. Exhibit 5 contains undated images of the opponent’s production plant.

20. Finally, Exhibit 6 is the registration certificate of US Trademark No. 6259888, **Leefar**, of which the proprietor is the opponent. The application date was 26 May 2020 and the registration date 2 February 2021. It was assigned to the opponent on 11 September 2024.

Assessment of goodwill

21. In *South Cone Incorporated v Jack Bessant, Dominic Greensmith, Kenwyn House and Gary Stringer (a partnership)* [2002] RPC 19 (HC), Pumfrey J stated:

“27. There is one major problem in assessing a passing off claim on paper, as will normally happen in the Registry. This is the cogency of the evidence of reputation and its extent. It seems to me that in any case in which this ground of opposition is raised the registrar is entitled to be presented with evidence which at least raises a prima facie case that the opponent’s reputation extends to the goods comprised in the applicant’s specification of goods. The requirements of the objection itself are considerably more stringent than the enquiry under s. 11 of the 1938 Act (see *Smith Hayden & Co Ltd’s Application (OVAX)* (1946) 63 RPC 97 as qualified by *BALI Trade Mark* [1969] RPC 472). Thus the evidence will include evidence from the trade as to reputation; evidence as to the manner in which the goods are traded or the services supplied; and so on.

28. Evidence of reputation comes primarily from the trade and the public, and will be supported by evidence of the extent of use. To be useful, the evidence must be directed to the relevant date. Once raised, the applicant must rebut the prima facie case. Obviously, he does not need to show that passing off will not occur, but he must produce sufficient cogent evidence to

satisfy the hearing officer that it is not shown on the balance of probabilities that passing off will occur.”

22. However, in *Minimax GmbH & Co KG v Chubb Fire Limited* [2008] EWHC 1960 (Pat) Floyd J (as he then was) stated that:

“8. [The above] observations are obviously intended as helpful guidelines as to the way in which a person relying on section 5(4)(a) can raise a case to be answered of passing off. I do not understand Pumfrey J to be laying down any absolute requirements as to the nature of evidence which needs to be filed in every case. The essential is that the evidence should show, at least prima facie, that the opponent’s reputation extends to the goods comprised in the application in the applicant’s specification of goods. It must also do so as of the relevant date, which is, at least in the first instance, the date of application.”

23. The high point of the opponent’s evidence is Exhibit 3, with the records of four sales to customer in the United Kingdom. I remind myself that in *Starbucks (HK) Limited & Anor v British Sky Broadcasting Group Plc & Ors* [2015] UKSC 31, Lord Neuberger said:

“47. I consider that we should reaffirm that the law is that a claimant in a passing off claim must establish that it has actual goodwill in this jurisdiction, and that such goodwill involves the presence of clients or customers in the jurisdiction for the products or services in question. And, where the claimant’s business is abroad, people who are in the jurisdiction, but who are not customers of the claimant in the jurisdiction, will not do, even if they are customers of the claimant when they go abroad.

...

52. As to what amounts to a sufficient business to amount to goodwill, it seems clear that mere reputation is not enough, as the cases cited in paras 21-26 and 32-36 above establish. The claimant must show that it has a significant goodwill, in the form of customers, in the jurisdiction, but it is not necessary that the claimant actually has an establishment or office in this

country. In order to establish goodwill, the claimant must have customers within the jurisdiction, as opposed to people in the jurisdiction who happen to be customers elsewhere. Thus, where the claimant's business is carried on abroad, it is not enough for a claimant to show that there are people in the jurisdiction who happen to be its customers when they are abroad. However, it could be enough if the claimant could show that there were people in this jurisdiction who, by booking with, or purchasing from, an entity in this country, obtained the right to receive the claimant's service abroad. And, in such a case, the entity need not be a part or branch of the claimant: it can be someone acting for or on behalf of the claimant."

24. The fact that the opponent has a trademark registered in the US has no bearing on the decision I must take. The opponent has not provided any sales figures for the UK, nor any dated evidence showing promotion of goods bearing the sign in this jurisdiction. While I acknowledge that the law of passing off may protect small businesses with more than a trivial goodwill (see *Lumos Skincare Limited v Sweet Square Limited & Ors* [2013] EWCA Civ 590), four sales over a period of just under a year that ends around 21 months before the relevant date at which goodwill is to be assessed is insufficient to support a claim to protectable goodwill. The opposition fails at the first hurdle.

OUTCOME

25. The opposition has failed and, subject to a successful appeal, Application No. 4221181 may proceed to registration.

COSTS

26. The applicant has been successful and is entitled to a contribution towards their costs in line with the scale set out in Tribunal Practice Notice 1/2023. The applicant took no part in the proceedings beyond filing a notice of defence and counter-statement. They incurred no official fees. I therefore make an award of £300 as a contribution to the cost of preparing their statement and considering the other side's statement.

27. I therefore order Rising Starlight LLC to pay Lin Xu the sum of £300. This sum is to be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings if the appeal is unsuccessful.

Dated this 15th day of September 2026

**Clare Boucher,
For the Registrar**