

O/0846/26

TRADE MARKS ACT 1994

IN THE MATTER OF UK DESIGNATION OF INTERNATIONAL REGISTRATION

NO. WO0000001790419 BY

LIMITED LIABILITY COMPANY "M" PLUS GROUP

FOR PROTECTION OF THE FOLLOWING TRADE MARK:



NATURA HARMONY

IN CLASSES 3, 5 AND 29

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. OP000450963

BY NATURA COSMÉTICOS S/A

BACKGROUND AND PLEADINGS

1. LIMITED LIABILITY COMPANY “M” PLUS GROUP (“the holder”) designated the international registration (“the IR”) shown on the front cover of this decision for protection in the UK on 14 February 2024.¹ This is also its international registration date. Protection is sought for the following goods:

Class 3: Food flavourings [essential oils]; bergamot oil; whiting; herbal extracts for cosmetic purposes; ethereal essences; essential oils; essential oils for aromatherapy use; essential oils of cedarwood; essential oils of lemon; essential oils of citron; jasmine oil; greases for cosmetic purposes; lavender water; lavender oil; almond oil for cosmetic purposes; deodorant soap; shaving soap; cakes of toilet soap; cakes of soap; almond soap; antiperspirant soap; soap for foot perspiration; soap; oils for cosmetic purposes; oils for cleaning purposes.

Class 5: Mustard oil for medical purposes; linseed dietary supplements; linseed oil dietary supplements; wheat germ dietary supplements; dietetic foods adapted for medical purposes; dietary supplements for human beings; whey protein dietary supplements; medicinal oils, other than essential oils; almond oil for medical purposes; by-products of the processing of cereals for dietetic or medical purposes; nutritional supplements; food for babies; wipes impregnated with disinfectants for hygiene purposes; tissues impregnated with pharmaceutical lotions.

Class 29: Coconut oil for food; sesame oil for food; olive oil for food; extra virgin olive oil for food; linseed oil for food; corn oil for food; almond oil for food; rape oil for food; colza oil for food; palm oil for food; palm kernel oil for food; sunflower oil for food; oils for food.

¹ The IR claims a priority date of 23 January 2024 based on Ukrainian filing number m202401233.

2. On 25 November 2024, the application was opposed by Natura Cosméticos S/A, (“the opponent”) based upon Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”).²
3. Under Section 5(2)(b), the opponent partially opposes the IR for all its goods in class 3 and some of its goods in class 5. The full list of opposed goods is shown later in this decision. The opponent relies on the following marks:

NATURA

(“the first earlier mark”)

UKTM No. 904303426³

UK Filing date: 22 February 2005

Registration date: 14 March 2007

Relying on the following goods:

Class 3: Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps, perfumery, essential oils, cosmetics, bath and shower gels, bath oils, bath salts, bath beads, skin care preparations, namely, lotions, creams, cleansers, scrubs, masks and toners; hair care and hair styling preparations, namely, shampoos, conditioners, hair lotions, sprays, gels, mousses and balms, preparations in aerosol form for hairdressing and haircare, hair lacquers; hair-colouring and hair-decolorizing preparations; permanent waving and curling preparations; personal deodorants, sun-tanning preparations; sunscreen oils, gels and lotions; shaving preparations; scented room fragrances, incense sticks,

² 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.

³ The opponent’s first earlier mark is a comparable mark based on an earlier EUTM. On 1 January 2021, in accordance with Article 54 of the Withdrawal Agreement between the UK and the European Union, the UK IPO created comparable UK trade marks for all right holders with existing EUTMs. These comparable marks enjoy the same filing and registration dates as their European counterparts.

potpourri and sachets; dentifrices; salts not for medical purposes; after-sun preparations (cosmetics); moisturizers; toiletries; make up products.

Class 5: Food for babies; face and body care preparations for pharmaceutical and medical use, including, sun-tanning and after-sun creams, lotions, milks, gels, sprays, oils, bodycare lotions and creams; hygiene products for medical purposes.



("the second earlier mark")

UKTM No. 2378296

UK Filing date: 17 November 2004

Registration date: 8 February 2008

Relying on the following goods:

Class 3: Cosmetics, cosmetic lotions and creams; perfumery products, all for personal use; deodorants for personal use, soaps and essential oils, non-medicated toilet preparations; all included in Class 3; but not including any such goods adapted for use on genitalia.

4. The opponent claims that the marks are similar and that the respective goods are identical or highly similar, with the result that there is a likelihood of confusion.
5. The holder filed a defence and counterstatement, denying the opponent's claims.

6. The opponent is represented by Baker & McKenzie LLP Limited, and the holder is represented by Natura Harmony LTD.
7. Neither party filed evidence during the proceedings. No hearing was requested however, both parties filed written submissions in lieu of the same. This decision is taken after careful consideration of the papers.

PRELIMINARY ISSUES

Opponent's submissions

8. In its written submissions in lieu, the opponent has included and referred to a prior decision of the Registrar (BL O/0491/23). Whilst I note the contents and findings of that decision, I am not bound by it and will proceed to make a full comparison, having regard to the case law below and all the relevant factors.

Holder's submissions

9. Several points have been raised in the holder's submissions in lieu. Before going any further into the merits of this opposition it is necessary to explain why, as a matter of law, these points will have no bearing on the outcome of this opposition.
10. The holder claims that they maintain exclusive and direct control over their distribution and sell their goods solely through their official website and their official brand stores on Amazon and eBay. As a result, the holder submits that there is no geographical or commercial overlap at the point of sale.⁴ However, for the avoidance of doubt, I must carry out a notional assessment based upon the parties' respective marks and the goods contained in their specifications. The actual target market and the activities they carry out are not relevant to my assessment.⁵

⁴ Point 6.3 of the holder's submissions in lieu dated 6 April 2026.

⁵ *O2 Holdings Limited, O2 (UK) Limited v Hutchison 3G UK Limited*, Case C-533/06 at [66]; *Compass Publishing BV v Compass Logistics Ltd* [2004] RPC 41 at [22].

11. The holder also asserts that because the opponent has not filed any evidence, there is no proof of use, proof of reputation, proof of enhanced distinctiveness and no proof of actual or potential confusion.
12. Dealing with the proof of use point, I acknowledge that the opponent's marks are subject to the use provisions in section 6A of the Act. However, because the holder did not put the opponent to proof of use in its counterstatement, the opponent may rely on all of the earlier goods identified without filing evidence of use.
13. As for the absence of evidence relating to reputation or enhanced distinctive character, I do not consider this to be fatal to the opponent's case. A reputation is not a prerequisite for success under section 5(2)(b). However, in the absence of evidence of use, the opponent is unable to establish that the distinctive character of its earlier mark has been enhanced through use. Consequently, I will assess the earlier mark on the basis of its inherent distinctive character alone.
14. In relation to the lack of evidence of confusion, in *The European Limited v The Economist Newspaper Ltd* [1998] FSR 283 Millett L.J. stated that:
- “Absence of evidence of actual confusion is rarely significant, especially in a trade mark case where it may be due to differences extraneous to the plaintiff's registered trade mark.”
15. I have no evidence before me of how (or to what extent) the parties' marks have been used in practice. Consequently, it is impossible to assess whether the absence of evidence of confusion is due to the fact that the marks at issue are not confusingly similar or due to other matters relating to the way in which the marks have been used (or not, as the case may be). Therefore, this line of argument does not assist the holder.

DECISION

My approach

16. The opponent has relied upon two earlier marks. I am of the view that the goods within the specification of the first earlier mark represent the opponent's strongest case. In the event that I find a likelihood of confusion in respect of the first earlier mark, any finding of confusion in respect of the remaining marks does not further the opponent's case. On the contrary, if I find no likelihood of confusion for the first earlier mark, it follows that the same finding will apply to the second earlier mark. I will, therefore, focus my assessment on the opponent's first earlier mark. If required, I will address this point further when considering any final remarks at the conclusion of this decision. For the avoidance of doubt, I shall refer to the opponent's first earlier mark as "the earlier mark" throughout the remainder of this decision.

Section 5(2)(b)

17. Section 5(2)(b) of the Act is as follows:

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

[...]

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

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

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, 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 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; 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

19. In comparing the respective specifications, all relevant factors should be considered, as per *Canon*, where the Court of Justice of the European Union (“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.”

20. 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.

21. In *Gérard Meric v OHIM*,⁶ (“*Meric*”), the General Court (“GC”) held that goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by the trade mark application and vice versa.

22. The goods to be compared are as follows:

Opponent's goods	Opposed goods
Class 3: Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps, perfumery, essential oils, cosmetics, bath and shower gels, bath oils, bath salts, bath beads, skin care preparations, namely, lotions, creams, cleansers, scrubs, masks and toners; hair care and hair styling preparations, namely, shampoos, conditioners, hair lotions, sprays, gels, mousses and balms, preparations in aerosol form for hairdressing and haircare, hair	Class 3: Food flavourings [essential oils]; bergamot oil; whiting; herbal extracts for cosmetic purposes; ethereal essences; essential oils; essential oils for aromatherapy use; essential oils of cedarwood; essential oils of lemon; essential oils of citron; jasmine oil; greases for cosmetic purposes; lavender water; lavender oil; almond oil for cosmetic purposes; deodorant soap; shaving soap; cakes of toilet soap; cakes of soap; almond soap; antiperspirant soap; soap for foot perspiration; soap; oils for

⁶ Case T-133/05

lacquers; hair-colouring and hair-decolorizing preparations; permanent waving and curling preparations; personal deodorants, sun-tanning preparations; sunscreen oils, gels and lotions; shaving preparations; scented room fragrances, incense sticks, potpourri and sachets; dentifrices; salts not for medical purposes; after-sun preparations (cosmetics); moisturizers; toiletries; make up products. Class 5: Food for babies; face and body care preparations for pharmaceutical and medical use, including, sun-tanning and after-sun creams, lotions, milks, gels, sprays, oils, bodycare lotions and creams; hygiene products for medical purposes.	cosmetic purposes; oils for cleaning purposes. Class 5: Food for babies; wipes impregnated with disinfectants for hygiene purposes.
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Class 3

23. The holder's specification includes *Food flavourings [essential oils]; bergamot oil; ethereal essences; essential oils; essential oils for aromatherapy use; essential oils of cedarwood; essential oils of lemon; essential oils of citron; jasmine oil and lavender oil*. These terms are either worded identically to the opponent's *essential oils* or identical based on *Meric*.

24. The holder's terms *almond oil for cosmetic purposes; herbal extracts for cosmetic purposes; greases for cosmetic purposes and oils for cosmetic purposes* describe

cosmetic preparations intended for personal care and beauty purposes. They are therefore encompassed by the opponent's broader term *cosmetics* and identical in line with *Meric*.

25. The earlier specification includes the term *soaps*. This is either self-evidently identical or *Meric* identical to the holder's terms of *deodorant soap; shaving soap; cakes of toilet soap; cakes of soap; almond soap; antiperspirant soap; soap for foot perspiration and soap*.

26. *Lavender water* has several uses including that of a facial mist or toner which provides hydration and has a calming effect on the skin. I therefore consider it to be encompassed by the opponent's earlier term *skin care preparations, namely [...] toners [...] sprays*. As such, these goods are identical in line with *Meric*.

27. I consider *oils for cleaning purposes* to be oil-based cleaning preparations. In the absence of any indication that the goods are intended for personal care or cosmetic use, I do not consider the term to be limited to, or primarily indicative of, skin or body cleansing products. As such, I consider this term to fall within the opponent's *cleaning, polishing, scouring and abrasive preparations*. These terms are therefore identical in line with *Meric*.

28. My understanding of the term *whiting* is that it is a finely powdered chalk used for cleaning purposes. I find that this term would be encompassed by the opponent's *cleaning, polishing, scouring and abrasive preparations* and is therefore identical in accordance with *Meric*.

Class 5

29. Both specifications include the term *Food for babies*. These are therefore identical.

30. I consider the closest comparator to the holder's *wipes impregnated with disinfectants for hygiene purposes* to be *hygiene products for medical purposes*.

Although the specification does not expressly state that the wipes are for medical purposes, they are goods intended to maintain hygiene and prevent contamination. Consequently, they share a closely related purpose with hygiene products for medical purposes. They may also have a shared physical nature and method of use if the opponent's *hygiene products* are supplied in the form of wipes. The goods are likely to be sold through overlapping trade channels, including pharmacies and healthcare retailers, and may be purchased by the same users. While there may be an element of competition, the goods are not complementary. Taking these factors into account, I find the goods to be similar to a high degree.

The average consumer and the purchasing act

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

32. 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 or services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97.

33. In *Iconix* (quoted above), 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.

34. The average consumer for the goods in classes 3 and 5 will primarily be members of the general public, although I do not discount professional users such as beauticians in the case of the class 3 goods. The cost of the goods is likely to vary but, on balance, is unlikely to be particularly high. The goods are likely to be purchased fairly frequently. During the purchasing process, consumers will likely consider factors such as price, quality, scent, aesthetic appeal and suitability for their intended purpose. Taking these factors into account, I consider that a medium degree of attention will be paid when purchasing the goods.

35. The goods are likely to be obtained by self-selection from the shelves of a retail outlet, or their online equivalent. Alternatively, the goods may be purchased

following perusal of advertisements or inspection of a catalogue. Visual considerations are, therefore, likely to dominate the selection process. However, I do not discount that there may also be an aural component to the purchase through advice sought from a sales assistant or representative.

Comparison of the marks

36. It is clear from *Sabel v Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade 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 trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components.

37. 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.”

38. 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.

39. The respective trade marks are shown below:

The earlier mark	The IR
NATURA	

40. The earlier mark is the word “NATURA”, presented in an upper-case font. The overall impression lies in the word itself.

41. The IR comprises the wording “NATURA HARMONY” presented in a slightly stylised upper-case font. Above the wording is a figurative device formed of three leaves. Whilst the leaf device is large and sits above the wording, I remind myself that the GC held in *Wassen International Ltd v OHIM (SELENIUM-ACE)*, Case T-312/03, that verbal elements should in principle be held to be more distinctive than figurative elements of a mark, as the average consumer will more easily refer to the origin of the goods by the words than by describing a device.⁷ Of the verbal elements, “NATURA” appears first however, “HARMONY” is presented in the same font and remains clearly visible. Consequently, I find that the combination of “NATURA HARMONY” wording makes the greater contribution to the overall impression of the mark with the leaf device playing a secondary, albeit not negligible, role.

42. Visually, the marks coincide by way of the word “NATURA”. This is the sole element of the earlier mark and the first word element of the IR (the first part of a mark being a position to which the average consumer pays more attention).⁸ The additional wording and figurative device in the IR has no counterpart in the earlier mark and therefore acts as a point of visual difference. On balance, I consider there to be a low to medium degree of similarity.

⁷ At paragraph 37

⁸ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

43. The “NATURA” element in both marks will be pronounced identically. This creates a point of aural overlap. The IR also includes the word “HARMONY” which is a dictionary defined word and will be pronounced in the usual way. I do not consider that the leaf device present in the IR will be articulated. Overall, I find there is a medium degree of aural similarity.

44. In relation to the conceptual comparison, the holder submits the following:

““NATURA” conveys a general reference to nature. “NATURA HARMONY” conveys a more developed and specific concept, referring to harmony and balance within nature. This creates a clear conceptual distinction.”

45. On this point, I refer to paragraph 32 of *LIGHT VITAMIN* (BL O/1174/25) wherein Mr Thomas Mitcheson KC, sitting as the Appointed Person, set out that an assessor should normally consider if the goods have a potential effect on conceptual meaning as a result of any link or allusion between the mark and the goods.

46. The earlier mark consists solely of the word “NATURA”. Whilst it is not a dictionary-defined word, I consider that a significant proportion of consumers will perceive it as an allusion to the word “nature” or “natural”. Given that the goods at issue include cosmetics, toiletries, cleaning goods and baby food, consumers may perceive the mark as alluding to goods containing natural ingredients.

47. I make the same finding in relation to the word “NATURA” in the IR. It is likely to be perceived as an allusion to nature or natural products. The word “HARMONY” is an ordinary English dictionary word which is likely to be understood as referring to balance, wellbeing or things existing together in a pleasing or beneficial way. Taken as a whole, the IR is likely to convey a broadly natural and wellbeing-oriented concept. The leaf device reinforces that conceptual message.

48. The marks therefore coincide in the concept conveyed by the word “NATURA”. Whilst the IR contains the additional element “HARMONY” and a figurative leaf

device, neither moves the conceptual message of the IR away from the natural theme conveyed by the earlier mark. Rather, those elements build upon and reinforce it. Taking these factors into account, I find that the marks are conceptually similar to a medium to high degree.

Distinctive character of the earlier mark

49. 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).”

50. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The

distinctiveness of a mark can be enhanced by virtue of the use that has been made of it.

51. There has been no claim that the mark enjoys an enhanced level of distinctive character, nor has there been any evidence filed to that effect. Consequently, I have only the inherent position to consider.

52. The earlier mark consists of the word "NATURA". For the reasons already given, I find that consumers will perceive it as an allusion to the word "nature" or "natural". For goods in classes 3 and 5, that meaning is highly allusive, suggesting that the goods are natural or contain natural ingredients. I therefore find that the mark has a low degree of inherent distinctive character.

GLOBAL ASSESSMENT- Likelihood of confusion

53. 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. As I mentioned above, 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 or she has retained in their mind.

54. I have found the goods to be identical or highly similar. I have found that the average consumer will predominantly comprise members of the general public.

Those consumers will pay a medium degree of attention during the purchasing process. I found that both visual and aural aspects of the mark will play a role in the purchasing process. I have found the marks to be visually similar to a low to medium degree. I have found the marks to be aurally similar to a medium degree. I have found the marks to be conceptually similar to a medium to high degree. I found the earlier mark to hold a low degree of inherent distinctiveness and that this has not been enhanced through use.

55. The identity and high degree of similarity between at least some of the goods is clearly a factor in favour of the opponent. However, taking all of the above factors into account, I consider it unlikely that the marks will be mistakenly recalled or misremembered as each other. The purchasing process will be predominantly visual, and the marks are likely to be encountered visually prior to purchase. Whilst the earlier mark is reproduced in its entirety as the first verbal element of the IR, the IR must be considered as a whole. As I have already found, the overall impression of the IR lies in the combination of the words “NATURA HARMONY”, with the leaf device making a secondary contribution. The word “HARMONY” presented in the same font as “NATURA”, remains clearly visible and will not be overlooked by the average consumer. In addition, the IR contains a noticeable figurative element which has no counterpart in the earlier word mark. Accordingly, notwithstanding the shared presence of the word “NATURA”, I consider that the additional verbal and figurative elements create sufficient differences between the marks. The average consumer, even allowing for imperfect recollection and paying a medium degree of attention, is unlikely to mistake one mark for the other or misremember one as the other. Taking all of the relevant factors into account, I do not find there to be a likelihood of direct confusion.

56. I will now consider whether there is a likelihood of indirect confusion. I am reminded of the case of *L.A. Sugar Limited v By Back Beat Inc*, BL O/375/10, wherein Mr Iain Purvis Q.C., 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). ”.

57. These examples are not exhaustive but provide helpful focus.

58. I recognise that the Court of Appeal has emphasised that, where there is no direct confusion, there must be a “proper basis” for finding indirect confusion.⁹ In this connection, it is not sufficient that a mark merely calls to mind another mark: this is mere association not indirect confusion.¹⁰

59. I note that the CJEU in *L’Oréal SA v OHIM*, Case C-235/05 P, confirmed that weak distinctive character of the earlier trade mark does not preclude a likelihood of confusion.

60. In *Face2FaceHR Partners Limited v Peninsula Business Services Limited*, O/0368/23, Emma Himsworth K.C., as the Appointed Person, reviewed the case law in *Whyte and Mackay v Origin* [2015] EWHC 1271 (Ch) and *Nicoventures Holdings Limited v The London Vape Co Ltd* [2017] EWHC 3393 (Ch), as well as guidance in the Common Communication on the Common Practice of Relative Grounds of Refusal - Likelihood of Confusion (impact of non-distinctive/weak components) dated 2 October 2014, which is referred to in the case law. Miss Himsworth summarised the correct approach when assessing the likelihood of confusion where the only common element between the marks in issue has no or low distinctiveness as follows, at paragraph 44:

“(1) The distinctiveness of the mark as a whole must be assessed, taking into account that a minimum degree of distinctiveness must be acknowledged.

(2) The distinctiveness of each of the components of both marks must be assessed with priority being given to the coinciding elements.

(3) The focus of the assessment of the likelihood of confusion should be on the impact of the non-coinciding components on the overall impression of the mark.

(4) Account must be taken of the similarities/differences in the non-coinciding elements of the marks.

⁹ *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207

¹⁰ *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17

(5) A coincidence of an element with a low level of distinctiveness will not usually lead to a likelihood of confusion.

(6) There may be a finding of a likelihood of confusion if (a) the non-coinciding elements of the mark are of lower (or equally low) degree of distinctiveness or are of insignificant visual impact and the overall impression is similar; or (b) the overall impression of the marks is highly similar or identical.”

61. I bear in mind that the earlier mark possesses a low degree of inherent distinctive character and that a shared element with a low level of distinctiveness will not usually give rise to a likelihood of confusion. However, each case must be assessed on its own merits. In the present case, although “NATURA” and “HARMONY” will be perceived as a whole, I do not consider that the combination gives “NATURA” a wholly different meaning from that which it possesses independently. The word “NATURA” will continue to be understood as referring to nature, natural products or natural ingredients, whilst “HARMONY” will be understood as alluding to balance, wellbeing or things existing together in a pleasing or beneficial way. In my view, the addition of “HARMONY” simply introduces a second, equally weak wellness-related concept. Similarly, the leaf device reinforces the natural theme already conveyed by “NATURA”, rather than introducing a new or distinctive concept of its own. Whilst both the word “HARMONY” and the leaf device contribute to the overall impression of the IR and are sufficient to avoid direct confusion, they reinforce the same broad themes of nature, wellbeing and natural products already conveyed by “NATURA”. I consider this to be particularly relevant given the goods at issue. Consumers are therefore likely to continue to perceive “NATURA” separately within the IR and I find that it retains an independent distinctive role within the mark. In those circumstances, and bearing in mind the identity and high degree of similarity between the goods, I consider that the average consumer may reasonably assume that “NATURA HARMONY” identifies a particular range, line extension or sub-brand offered under the NATURA mark. As such, I find it likely that the relevant consumer would believe that the goods sold under the respective marks

originate from the same undertaking, or from economically linked undertakings. Consequently, I find there to be a likelihood of indirect confusion.

CONCLUSION

62. The partial opposition under section 5(2)(b) of the Act is successful. Subject to any appeal against this decision, the IR shall be refused protection in the UK for the following opposed goods:

Class 3: Food flavourings [essential oils]; bergamot oil; whiting; herbal extracts for cosmetic purposes; ethereal essences; essential oils; essential oils for aromatherapy use; essential oils of cedarwood; essential oils of lemon; essential oils of citron; jasmine oil; greases for cosmetic purposes; lavender water; lavender oil; almond oil for cosmetic purposes; deodorant soap; shaving soap; cakes of toilet soap; cakes of soap; almond soap; antiperspirant soap; soap for foot perspiration; soap; oils for cosmetic purposes; oils for cleaning purposes.

Class 5: Food for babies; wipes impregnated with disinfectants for hygiene purposes.

63. The IR will proceed to protection for the following unopposed goods:

Class 5: Mustard oil for medical purposes; linseed dietary supplements; linseed oil dietary supplements; wheat germ dietary supplements; dietetic foods adapted for medical purposes; dietary supplements for human beings; whey protein dietary supplements; medicinal oils, other than essential oils; almond oil for medical purposes; by-products of the processing of cereals for dietetic or medical purposes; nutritional supplements; tissues impregnated with pharmaceutical lotions.

Class 29: Coconut oil for food; sesame oil for food; olive oil for food; extra virgin olive oil for food; linseed oil for food; corn oil for food; almond oil for food; rape

oil for food; colza oil for food; palm oil for food; palm kernel oil for food; sunflower oil for food; oils for food.

64. Given that I have found a likelihood of confusion based on the opponent's first earlier mark, I do not consider it necessary to consider the remaining mark on the basis that doing so will not improve the opponent's position.

COSTS

65. The opponent has succeeded and is entitled to a contribution towards its costs. Awards of costs in proceedings commenced on or after 1 February 2023 are governed by Annex A of Tribunal Practice Notice ('TPN') 1 of 2023. Using that TPN as a guide, I award the opponent the sum of **£700** as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Official fee for filing Form TM7:	£100
Preparing the Statement of Grounds and considering the Counterstatement:	£250
Preparing written submissions in lieu:	£350
Total:	£700

66. I therefore order LIMITED LIABILITY COMPANY "M" PLUS GROUP to pay Natura Cosméticos S/A the sum of **£700**. 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 22nd day of September 2026

Catrin Williams
For the Registrar